

an inspection certificate. The requirements are similar to those at auction markets but are flexible because conditions will differ at the receiving stations. When the tobacco is inspected or graded by the receiver, the tobacco must be made available for mandatory inspection at the same time and at the same location within the receiving station. In order to provide a meaningful service to growers, who are paying for the inspection service, it is necessary to require the proper display of the tobacco and to require that the mandatory inspection be conducted at the same time and under the same conditions as any other inspections, and that the results be readily available to the producer. It is also necessary to provide that, as at auction markets, no one may interfere with the inspector in the process of grading tobacco.

The user fee for mandatory inspection of tobacco was increased from \$.0083 to \$.0100 per pound in 2001 to cover the costs of performing grading services and to maintain an adequate reserve to cover program financial responsibilities. During the 2001 crop-year, the Department only graded 31 percent of the total amount of tobacco marketed. However, with the adoption of mandatory grading of all tobacco, except cigar types, approximately 98 percent of tobacco marketed will require federal grading for the 2002 and subsequent crop years.

As a result of resources being more efficiently utilized over a larger geographical area and the additional revenue generated, the fee is reduced from \$.010 to \$.009 per pound. The reduced fee was recommended by the National Advisory Committee for Tobacco Inspection Services at its meeting on April 16, 2002.

The AMS reviews its user fee programs annually to determine if fees are adequate. The most recent review determined that the previous fee schedule was more than adequate for the 2002 crop-year and would exceed the target level for the operating reserve balances.

Due to an estimated 69 percent increase in tobacco to be inspected for the 2002 crop-year, obligations are estimated at \$10,152,000 and revenues are expected to be \$8,503,000 for a loss of \$1,649,000. An analysis of available data indicates that a fee of \$.009 per pound would result in maintaining the operating reserve balance at \$6,279,000 for the 2002 crop-year and \$4,357,000 for the 2003 crop-year which is adequate to meet financial obligations.

Executive Order 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt 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 this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 12.201) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. There are about 190 tobacco warehouses and about 450,000 tobacco producers. There will also be about 35 receiving stations, most of which will be operated under contract at former tobacco auction warehouses and a few of which will be operated at tobacco auction warehouses. These would also be small businesses. It has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The requirements of this rule are the minimum necessary for the implementation of the requirements of the Appropriations Act for the mandatory inspection of tobacco. The provisions are similar, but somewhat more flexible, that the requirements for the inspection and certification of tobacco sold at auction on designated markets, which have previously been determined not to have a significant economic impact on a substantial number of small entities.

The information collection requirements that appear in part 29 have been previously approved by the Office of Management and Budget under OMB Control No. 0581-0056.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

Accordingly, the interim final rule amending 7 CFR part 29 which was published at 67 FR 36079 on May 23, 2002, is adopted as a final rule without change.

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-98-303]

Apples; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the United States Standards for Grades of Apples. These standards are issued under the Agricultural Marketing Act of 1946. The rule will provide for the mixed varieties and change the color requirements for apples by reducing the number of apple varieties required to meet specific minimum color requirements. It also deletes the provision that apples be "carefully hand-picked." The "U.S. No. 1 Early grade" and the "Unclassified" section will be deleted. Size specifications will be changed to allow Red Delicious and Golden Delicious varieties to meet either a minimum diameter or a minimum weight (currently these varieties must meet a minimum diameter designation). Changes will also be made to the application of tolerances for the purpose of allowing greater tolerances for defects in individual packages which contain 10 pounds or less, provided that the averages for the lot as a whole are met. The marking requirements will be changed by adding variety and grade to required markings on containers. The term "brown surface discoloration" will be added to the provisions which contain the requirements for the various grades of apples. The classification of "Bitter pit" and "Jonathan spot" will be clarified. The definition of "fairly tight" will be revised. Also, the U.S. Condition Standards for Export will be revised by removing the tolerance for slight scald

and by changing the individual container tolerances in these requirements from one defective apple to three defective apples, provided the averages for the lot as a whole are met. In addition, the rule will provide metric equivalents for dimensions given in terms of U.S. customary units and contains conforming and editorial changes. The purpose for this revision is to update and revise the standards to more accurately represent today's marketing practices.

EFFECTIVE DATES: December 19, 2002.

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 2065 South Building, STOP 0240, Washington, DC 20250; Fax (202) 720-8871.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. 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.

Regulatory Flexibility Act

The Agricultural Marketing Service (AMS) received a request to update and revise the United States Standards for Grades of Apples from the U.S. Apple Association (USAA). The USAA is a trade association representing over 500 individual apple business-related firms including growers, packers, shippers, processors, and industry suppliers. In addition, the USAA also represents approximately 9,000 apple growers throughout the U.S. through affiliation with state or regional apple associations. The Department and the USAA have been working closely together over the past eleven years to identify issues, defects, tolerances, and marketing practices related to apples for fresh market sale for the purpose of updating the United States Standards for Grades of Apples. This rule revising the United States Standards for Grades of Apples will benefit all aspects of the apple industry with regard to these areas and make the standards current with today's marketing trends and practices.

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 in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this final regulatory flexibility analysis.

This rule will revise the U.S. Standards for Grades of Apples that were issued under the Agricultural Marketing Act of 1946. This amendment of the standards will: Revise the basic requirement sections of each grade by providing for mixed varieties; delete the reference to "carefully hand-picked" revise the reference to "scald" by using the term "brown surface discoloration"; clarify the classification of "Bitter pit" and "Jonathan spot"; place the definitions for bruising in their appropriate places; delete the "U.S. No. 1 Early grade"; revise the color requirements section by redefining the requirements and requiring less varieties to meet these requirements; delete the "Unclassified" section; designate weight equivalents (in grams) for certain diameter sizes of Red Delicious and Golden Delicious varieties; revise the "application of tolerances" section in regard to consumer packages; and add variety and grade to the marking requirements section. Based on comments received, the definition of "fairly tight" will be revised.

The U.S. Standards for Grades of Apples and the U.S. Condition Standards for Export are both voluntary standards. There are no regulatory provisions that require the use of these standards with the exception of the Export Apple Act (7 U.S.C. 581 *et seq.*) and its regulations (7 CFR part 33) in regard to the U.S. Standards for Grades of Apples. Under the Export Apple Act, shipments of apples to foreign countries must meet a minimum requirement of the U.S. No. 1 grade (there are exemptions based on lot size, destination, etc.)

According to USDA's National Agricultural Statistics Service (NASS) report of the 1997 Census of Agriculture, there are approximately 18,500 apple farms in the United States. Further, NASS information indicates that, in 1998, these 18,500 farms produced over 11 billion pounds of apples. Approximately 55 percent of the 1998 crop was eaten as fresh fruit. In 1999, apple production was down to 10 billion pounds. The top five producing states were Washington, New York, Michigan, California, and Pennsylvania,

respectively. These five states collectively produced over 83 percent of the total 1998 U.S. apple crop.

Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) 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 apple industry is characterized by growers and handlers whose farming operations generally involve more than one type (such as fresh market utilization versus processed market utilization) and variety of apple, and whose income from farming operations is not exclusively dependent on one apple variety or even one commodity. Typical apple growers and shippers produce multiple varieties of fresh market apples within a single year. It is estimated that the majority of the producers do have overall gross annual receipts greater than \$750,000. Additionally, there are approximately 5,100 apple handlers (*i.e.*, packers, brokers, distributors, importers, *etc.*). It is estimated that the majority of apple handlers do not fit SBA's definition of a small entity. Further, there are 48 state inspection agencies in addition to Fruit and Vegetable Programs (FVP) that perform inspections using these standards.

This rule will revise the U.S. Standards for Grades of Apples. These changes are intended to update the standards to maintain their usefulness in today's markets. For example, the color requirements that appear in the current standards are much the same as those that were published in 1923, even though many of the varieties marketed then are no longer marketed, or marketed in a significant volume. This action will make the standards more consistent and uniform with current marketing trends and commodity characteristics. Therefore, it should benefit handlers and growers regardless of their size. Further, the benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities. Alternatives were considered for this action. One alternative would be to not issue the rule. However, the need for revision increases due to ever changing market characteristics, and the revisions represents approximately 10 years of research, surveys, and other input from all sectors of the apple industry and government. Further, since the purpose of these standards is to facilitate the marketing of agricultural commodities, not revising them by upgrading the

standard could result in confusion in terms of the proper application of the U.S. grade standards.

This action will not impose any additional reporting or recordkeeping requirements on either small or large apple producers, handlers, or importers. In addition, other than discussed above, the Department has not identified any Federal rules that duplicate, overlap, or conflict with this rule.

The proposed rule, United States Standards for Grades of Apples, was published in the **Federal Register** on March 26, 2002 (Docket Number FV-98-303). A comment period of 60 days was issued which closed on May 28, 2002.

Comments

A total of six comments were received during the comment period. These included comments from industry associations representing growers, packers, shippers, processors, and State Departments of Agriculture.

One comment, received from an industry association, was in favor of the proposal in its entirety. This comment stated that it is expected that these changes will more accurately represent typical commercial practices and standards within the apple industry.

Two comments were received in favor of the proposal with the exception of the allowing for weight equivalents for diameter sizes of the Red Delicious and Golden Delicious varieties. One comment received from a State Department of Agriculture opposed this change. The reason given was that this change would burden inspection services in all states by requiring the purchase of multiple gram scales. State inspection services generally inspect other products which require the use of scales. AMS believes that although there may be a need to purchase additional scales, the cost of these scales would not be substantial enough to override the industry's request to allow for these equivalents. In another comment, an FVP staff member expressed the opinion that weight equivalents for diameter sizes would make it difficult to perform inspections. Additionally, the commenter expressed concern that by only allowing two varieties to use the weight equivalent for diameter sizes would be inequitable. AMS experience with performing inspection for products having weight equivalents for diameter sizes has not proven to increase the level of difficulty. In regard to the commentors concern of only allowing two varieties to use weight equivalents, these two varieties were specified due to their characteristic shape. Their shape can often be elongated rather than wide.

The result is a product that actually has more edible flesh but is still unable to meet minimum diameter size requirements. AMS believes that the use of weight equivalents for diameter sizes should remain as stated in the proposal.

One comment was received from a company which stores, packs, and markets apples both domestically and for export; this company also represents growers. The comment was generally in agreement of the proposal. However, the comment addressed two issues. The first being the removal of the phrase "carefully handpicked." The commenter felt that this phrase is useful in encouraging growers to be careful in the handling of apples. AMS proposed this deletion and its corresponding definition because it is difficult to determine if an apple has been "carefully handpicked." Further, this requirement was not intended to prevent machine picked apples from making a U.S. grade. Therefore, AMS believes "carefully handpicked" and its corresponding definition should be deleted as proposed. The commenter also stated, in its opinion the term "surface scald" would be a better term than "brown surface discoloration." As stated in the proposed rule, there are several defects that occur simply as brown surface discoloration. Surface scald cannot be differentiated from these defects by the naked eye. AMS believes it is more accurate to group these defects together as "brown surface discoloration" rather than "scald."

One comment by a State Department of Agriculture recommended removing the word "surface" in the definition of damage by bitter pit. This commenter stated, "Often bitter pit cannot be detected unless the fruit is cut and examined internally." The Department's Agricultural Handbook 376 states (with regard to bitter pit), "If observed at the earliest visible stage, the skin over the affected area appears as water-soaked." Although bitter pit does affect the flesh of the apple it is not discernable until the skin is affected. Therefore, AMS believes the definition damage by bitter pit should remain as in the proposal. This commenter also noted an error in the proposed rule. The "Discussion of the Proposed Rule" section stated "section 51.300, U.S. Extra Fancy, section 51.301, U.S. Fancy, and section 51.303, U.S. Utility currently states that apples must be 'of one variety.' This would be changed to '* * * consists of apples of one variety (except when more than one variety is printed on the container)' to allow for mixed variety lots." However, in the actual wording of the standards section of the proposed rule, these sections state, "* * *

consists of apples of similar varietal characteristics (except when the name of more than one variety is printed on the container)." These sections should be as stated in the "Discussion of the Proposed Rule" section and are corrected in this final rule.

A comment from a State Department of Agriculture stated, "I would urge USDA to consider exempting the "Euro" carton from the requirements of fairly well filled and fairly tight which will allow for new marketing trends to enhance marketing rather than impede progress." Apples packed in tray or cell packed cartons are required to be at least fairly tight or fairly well filled in order to meet packing requirements in section 51.310. Fairly tight and fairly well filled are defined within these requirements as follows: "Fairly tight" means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The top layer of apples, or any pad or space filler over the top layer of apples, shall be not more than 3/4 inch below the top edge of the carton; "Fairly well filled" means that the net weight of apples in containers ranging from 2,100 to 2,900 cubic inch capacity is not less than 37 pounds for Cortland, Gravenstein, Jonathan, McIntosh and Golden Delicious varieties and not less than 40 pounds for all other varieties. The commenter notes, "In recent years the apple industry has been going through significant changes in the way apples are being packed and marketed. Tray pack cartons are being modified in many ways and these types of cartons may not meet the definitions of fairly well filled or fairly tight." AMS agrees with the commenter's observation in that the current definition of fairly tight and fairly well filled would restrict the use of the "Euro" carton. However, rather than exempting a particular container, it would be more appropriate and beneficial to the apple industry to update the definition of fairly tight to reflect current marketing practices. Therefore, based on this comment the definition of fairly tight will be revised to read as follows: "Fairly tight" means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts,

Reporting and recordkeeping requirements, Trees, Vegetables.

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

PART 51—[Amended]

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

Authority: 7 U.S.C. 1621—1627.

2. Subpart—United States Standards for Grades of Apples is revised to read as follows:

Subpart—United States Standards for Grades of Apples

Grades

- 51.300 U.S. Extra Fancy.
- 51.301 U.S. Fancy.
- 51.302 U.S. No. 1.
- 51.303 U.S. Utility.
- 51.304 Combination grades.

Color Requirements

- 51.305 Color requirements.

Tolerances

- 51.306 Tolerances.

Application of Tolerances

- 51.307 Application of tolerances.

Methods of Sampling and Calculation of Percentages

- 51.308 Methods of sampling and calculation of percentages.

Condition after Storage or Transit

- 51.309 Condition after storage or transit.

Packing Requirements

- 51.310 Packing requirements.

Marking Requirements

- 51.311 Marking requirements.

Definitions

- 51.312 Mature.
- 51.313 Overripe.
- 51.314 Clean.
- 51.315 Fairly well formed.
- 51.316 Injury.
- 51.317 Damage.
- 51.318 Serious damage.
- 51.319 Seriously deformed.
- 51.320 Diameter.

U.S. Condition Standards for Export

- 51.321 U.S. Condition Standards for Export.

Metric Conversion Table

- 51.322 Metric conversion table.

Grades

§ 51.300 U.S. Extra Fancy.

“U.S. Extra Fancy” consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, free from decay, internal browning, internal breakdown, soft scald, scab, freezing

injury, visible water core, and broken skins. The apples are also free from injury caused by bruises, brown surface discoloration, smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means. The apples are free from damage caused by bitter pit or Jonathan spot and by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, as well as damage by invisible water core after January 31st of the year following the year of production except for the Fuji variety of apples. Invisible water core shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table I of § 51.305, each apple of this grade has the amount of color specified for the variety. (See §§ 51.305 and 51.306.)

§ 51.301 U.S. Fancy.

“U.S. Fancy” consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, clean, fairly well formed, and free from decay, internal browning, internal breakdown, soft scald, freezing injury, visible water core, and broken skins. The apples are also free from damage caused by bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, bitter pit, Jonathan spot, or damage by other means, or invisible water core after January 31st of the year following the year of production, except for the Fuji variety of apples. Invisible water core shall not be scored against the Fuji variety of apples under any circumstances. For the apple varieties listed in table I of § 51.305, each apple of this grade has the amount of color specified for the variety. (See §§ 51.305 and 51.306.)

§ 51.302 U.S. No. 1.

“U.S. No. 1” consists of apples which meet the requirements of U.S. Fancy grade except for color, russeting, and invisible water core. In this grade, less color is required for all varieties listed in table I of § 51.305. Apples of this grade are free from excessive damage caused by russeting which means that apples meet the russeting requirements for U.S. Fancy as defined under the definitions of “damage by russeting,” except the aggregate area of an apple which may be covered by smooth net-like russeting shall not exceed 25 percent; and the aggregate area of an apple which may be covered by smooth solid russeting shall not exceed 10 percent: *Provided*, That, in the case of the Yellow Newtown or similar

varieties, the aggregate area of an apple which may be covered with smooth solid russeting shall not exceed 20 percent. Each apple of this grade has the amount of color specified in § 51.305 for the variety. Invisible water core shall not be scored in this grade. (See §§ 51.305 and 51.306.)

(a) *U.S. No. 1 Hail*: “U.S. No. 1 Hail” consists of apples which meet the requirements of U.S. No. 1 grade except that hail marks where the skin has not been broken and well healed hail marks where the skin has been broken, are permitted, provided the apples are fairly well formed. (See §§ 51.305 and 51.306.)

(b) [Reserved]

§ 51.303 U.S. Utility.

“U.S. Utility” consists of apples of one variety (except when more than one variety is printed on the container) which are mature but not overripe, not seriously deformed and free from decay, internal browning, internal breakdown, soft scald, and freezing injury. The apples are also free from serious damage caused by dirt or other foreign matter, broken skins, bruises, brown surface discoloration, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, visible water core, bitter pit or Jonathan spot, disease, insects, or other means. (See § 51.306.)

§ 51.304 Combination grades.

(a) Combinations of the above grades may be used as follows:

- (1) Combination U.S. Extra Fancy and U.S. Fancy;
- (2) Combination U.S. Fancy and U.S. No. 1; and
- (3) Combination U.S. No. 1 and U.S. Utility.

(b) Combinations other than these are not permitted in connection with the U.S. apple grades. When Combination grades are packed, at least 50 percent of the apples in any lot shall meet the requirements of the higher grade in the combination. (See § 51.306.)

Color Requirements

§ 51.305 Color requirements.

In addition to the requirements specified for the grades set forth in §§ 51.300 to 51.304, apples of these grades shall have the percentage of color specified for the variety in table I appearing in this section. All apple varieties other than those appearing in table I shall have no color requirements pertaining to these grades. For the solid red varieties, the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety: *Provided*, That an apple having color of

a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red

characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade. Faded brown stripes shall not be considered as color. (A) Color standards USDA Visual Aid APL-CC-1 (Plates a—e) consists of a folder containing the color requirements for apples set forth in this section and five plates illustrating minimum good shade of solid red or striped red color, minimum compensating color and shade not considered color, for the

following 12 varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York.

These color standards will be available for examination and purchasing information in the Fresh Products Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, South Building, Washington, DC 20250; in any field office of the Fresh Products Branch; or upon request of any authorized inspector of the Fresh Fruit and Vegetable Inspection Service.

TABLE 1¹

[Only the varieties listed below shall be required to meet a minimum color requirement]

Variety	U.S. extra fancy (Percent)	U.S. fancy (Percent)	U.S. No. 1 (Percent)
Red Delicious	66	40	25
Red Rome	66	40	25
Empire	66	40	25
Idared	66	40	25
Winesap	66	40	25
Jonathan	66	40	25
Stayman	50	33	25
McIntosh	50	33	25
Cortland	50	33	25
Rome Beauty	50	33	25
Delicious	50	33	25
York	50	33	25

¹ Variations on varietal designations listed above must meet or exceed those color requirements listed.

Tolerances

§ 51.306 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the grades in 51.300, 51.301, 51.302, 51.303, and 51.304 the following tolerances are provided as specified:

(a) *Defects:* (1) U.S. Extra Fancy, U.S. Fancy, U.S. No. 1, and U.S. No. 1 Hail grades: 10 percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged, including therein not more than 1 percent for apples affected by decay or internal breakdown.

(2) *U.S. Utility grade:* 10 percent of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half of this amount, or 5 percent, shall be allowed for apples which are seriously damaged by insects, and including in the total tolerance not more than 1 percent for apples affected by decay or internal breakdown.

(b) When applying the foregoing tolerances to Combination grades, no part of any tolerance shall be allowed to

reduce, for the lot as a whole, the 50 percent of apples of the higher grade required in the combination, but individual containers shall have not less than 40 percent of the higher grade.

(c) *Size:* When size is designated by the numerical count for a container, not more than 10 percent of packages in the lot may fail to be fairly uniform.¹ When size is designated by minimum or maximum diameter, not more than 5 percent of the apples in any lot may be smaller than the designated minimum, and not more than 10 percent may be larger than the designated maximum. For Red Delicious or Golden Delicious varieties only, a combination of minimum diameter and/or weight may be used. When this designation is used, an individual apple will be considered to have met the minimum size requirement even if the apple is smaller than the minimum diameter, provided it is equal to or greater than the weight provided in table II of this section. However, not more than 5 percent of the

apples in any lot may fail to meet either the minimum diameter or minimum weight when so designated. In addition, when Red Delicious or Golden Delicious apples are designated with diameter/weight combinations, they may only be designated according to the following table:

TABLE II

Red delicious	Golden delicious
2 1/8 inches or 65 grams	63 grams
2 1/4 inches or 75 grams	70 grams
2 3/8 inches or 84 grams	82 grams
2 1/2 inches or 100 grams	95 grams
2 5/8 inches or 115 grams	109 grams
2 3/4 inches or 139 grams	134 grams

Application of Tolerances

§ 51.307 Application of tolerances.

The contents of individual packages in the lot, are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(a) Packages which contain more than 10 pounds:

¹ "Fairly uniform" means the size of the fruit within the container does not vary more than 1/2 inch diameter from the smallest to largest fruit.

(1) Shall have not more than one and one-half times a specified tolerance of 10 percent or more and not more than double a tolerance of less than 10 percent, except that at least one apple which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any package.

(2) [Reserved]

(b) Packages which contain 10 pounds or less:

(1) No package may have more than 3 times the tolerance specified, except that at least three defective apples may be permitted in any package: *Provided*, That not more than three apples or more than 18 percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown.

(2) [Reserved]

Methods of Sampling and Calculation of Percentages

§ 51.308 Methods of sampling and calculation of percentages.

(a) When the numerical count is marked on the container, containers are packed to weigh ten pounds or less, or in any container where the minimum diameter of the smallest apple does not vary more than 1/2 inch from the minimum diameter of the largest apple, percentages shall be calculated on the basis of count.

(b) In all other cases except those listed in paragraph (a) of this section, they shall be calculated on the basis of weight.

Condition After Storage or Transit

§ 51.309 Condition after storage or transit.

Decay, scald, or any other deterioration which may have developed on apples after they have been in storage or transit shall be considered as affecting condition and not the grade.

Packing Requirements

§ 51.310 Packing requirements.

(a) Apples tray packed or cell packed in cartons shall be arranged according to approved and recognized methods. Packs shall be at least fairly tight² or fairly well filled.³

² "Fairly tight" means that apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible.

³ "Fairly well filled" means that the net weight of apples in containers ranging from 2,100 to 2,900 cubic inch capacity is not less than 37 pounds for Cortland, Gravenstein, Jonathan, McIntosh and Golden Delicious varieties and not less than 40 pounds for all other varieties.

(b) Closed cartons containing apples not tray or cell packed shall be fairly well filled or the pack shall be sufficiently tight to prevent any appreciable movement of the apples.

(c) Packs in wooden boxes or baskets shall be sufficiently tight to prevent any appreciable movement of apples within containers when the packages are closed. Each wrapped apple shall be completely enclosed by its individual wrapper.

(d) Apples on the shown face of any container shall be reasonably representative in size, color and quality of the contents.

(e) Tolerances: In order to allow for variations incident to proper packing, not more than 10 percent of the containers in any lot may fail to meet these requirements.

Marking Requirements

§ 51.311 Marking requirements.

Variety (or varieties if more than one is packed in the container), grade, and the numerical count or minimum diameter of apples packed in a closed container shall be indicated on the container. For apple lots utilizing the combined diameter/weight designations for Red Delicious and Golden Delicious varieties, the minimum diameter and minimum weight of apples packed in a closed container shall be indicated on the container.

(a) When the numerical count is not shown, the minimum diameter or, in the case of Red Delicious or Golden Delicious lots where minimum diameter/weight designations have been chosen, the minimum diameter and weight as designated in table II, shall be plainly stamped, stenciled or otherwise marked on the container in terms of whole inches, or whole inches and not less than eighth inch fractions thereof in the following manner: "A" inches or "B" grams, where "A" corresponds to one of the diameter measurements in terms of inches listed in table II and "B" corresponds to the weight measurement in grams as indicated in table II. Both diameter and weight must be shown using the word "or" between the given measurements.

(b) The word "minimum," or its abbreviation, when following a diameter size marking, means that the apples are of the size marked or larger. (See §§ 51.306 and 51.307.)

Definitions

§ 51.312 Mature.

"Mature" means that the apples have reached the stage of development which will insure the proper completion of the ripening process. Before a mature apple

becomes overripe it will show varying degrees of firmness, depending upon the stage of the ripening process. The following terms are used for describing different stages of firmness of apples:

(a) "Hard" means apples with a tenacious flesh and starchy flavor.

(b) "Firm" means apples with a tenacious flesh but which are becoming crisp with a slightly starchy flavor, except the Delicious variety.

(c) "Firm ripe" means apples with crisp flesh except that the flesh of the Gano, Ben Davis, and Rome Beauty varieties may be slightly mealy.

(d) "Ripe" means apples with mealy flesh and soon to become soft for the variety.

§ 51.313 Overripe.

"Overripe" means apples which have progressed beyond the stage of ripe, with flesh very mealy or soft, and past commercial utility.

§ 51.314 Clean.

"Clean" means that the apples are free from excessive dirt, dust, spray residue, and other foreign material.

§ 51.315 Fairly well formed.

"Fairly well formed" means that the apple may be slightly abnormal in shape but not to an extent which detracts materially from its appearance.

§ 51.316 Injury.

"Injury" means any specific defect defined in this Section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which more than slightly detract from the appearance or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to "inch" or "inches in diameter" refers to that of a circle of the specified diameter. Any reference to "aggregate area," "total area," or "aggregate affected area" means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as injury:

(a) Russetting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether an apple is injured by russetting. Smooth net-like russetting outside of the stem cavity or calyx basin shall be considered as injury when an aggregate area of more than 10 percent of the surface is

covered, and the color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russetting when the appearance is affected to a greater extent than the amount permitted above.

(b) Sunburn or sprayburn, when the discolored area does not blend into the normal color of the fruit.

(c) Dark brown or black limb rubs which affect a total area of more than one-fourth inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of injury by russetting.

(d) Hail marks, drought spots, other similar depressions or scars:

(1) When the skin is broken, whether healed or unhealed;

(2) When there is appreciable discoloration of the surface;

(3) When any surface indentation exceeds one-sixteenth inch in depth;

(4) When any surface indentation exceeds one-eighth inch in diameter; or

(5) When the aggregate affected area of such spots exceeds one-half inch in diameter.

(e) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) $\frac{1}{8}$ inch in depth;

(2) $\frac{5}{8}$ inch in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraphs (1) or (2) of this section.

(f) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than $\frac{1}{4}$ inch in diameter.

(g) Disease: (1) Cedar rust infection which affects a total area of more than three-sixteenths inch in diameter.

(2) Sooty blotch or fly speck which is thinly scattered over more than 5 percent of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.

(3) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-fourth inch in diameter.

(h) Insects: (1) Any healed sting or healed stings which affect a total area of more than one-eighth inch in diameter including any encircling discolored rings.

(2) Worm holes.

§ 51.317 Damage.

“*Damage*” means any specific defect defined in this section or an equally objectionable variation of any one of

these defects, any other defect, or any combination of defects, which materially detract from the appearance, or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to “*inch*” or “*inches in diameter*” refers to that of a circle of the specified diameter. Any reference to “*aggregate area*,” “*total area*,” or “*aggregate affected area*” means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as damage:

(a) Russetting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether an apple is damaged by russetting, except that excessively rough or bark-like russetting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russetting outside of the stem cavity or calyx basin shall be considered as damage:

(1) Russetting which is excessively rough on Roxbury Russet and other similar varieties.

(2) Smooth net-like russetting, when an aggregate area of more than 15 percent of the surface is covered, and the color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russetting when the appearance is affected to a greater extent than the amount permitted above.

(3) Smooth solid russetting, when an aggregate area of more than 5 percent of the surface is covered, and the pattern and color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russetting when the appearance is affected to a greater extent than the above amount permitted.

(4) Slightly rough russetting which covers an aggregate area of more than one-half inch in diameter.

(5) Rough russetting which covers an aggregate area of more than one-fourth inch in diameter.

(b) Sunburn or sprayburn which has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russetting.

(c) Limb rubs which affect a total area of more than one-half inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of damage by russetting.

(d) Hail marks, drought spots, other similar depressions, or scars:

(1) When any unhealed mark is present;

(2) When any surface indentation exceeds one-eighth inch in depth;

(3) When the skin has not been broken and the aggregate affected area exceeds one-half inch in diameter; or

(4) When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth inch in diameter.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-fourth inch.

(f) Invisible water core existing around the core and extending to water core in the vascular bundles, or surrounding the vascular bundles when the affected areas surrounding three or more vascular bundles meet or coalesce, or existing in more than a slight degree outside the circular area formed by the vascular bundles. *Provided*, That invisible water core shall not be scored as damage against the Fuji variety of apples under any circumstances.

(g) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) $\frac{3}{16}$ inch in depth;

(2) $\frac{7}{8}$ inch in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraphs (1) or (2) of this section.

(h) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than $\frac{1}{2}$ inch in diameter.

(i) Disease: (1) Scab spots which affect a total area of more than one-fourth inch in diameter.

(2) Cedar rust infection which affects a total area of more than one-fourth inch in diameter.

(3) Sooty blotch or fly speck which is thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(4) Red skin spots which are thinly scattered over more than one-tenth of the surface, or dark, heavily concentrated spots which affect an area of more than one-half inch in diameter.

(5) Bitter pit or Jonathan spot when one or more spots affects the surface of the apple.

(j) Insects: (1) Any healed sting or healed stings which affect a total area of

more than three-sixteenths inch in diameter including any encircling discolored rings.

(2) Worm holes.

§ 51.318 Serious damage.

“*Serious damage*” means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which seriously detract from the appearance, or the edible or shipping quality of the apple. In addition, specific defect measurements are based on an apple three inches in diameter. Corresponding smaller or larger areas would be allowed on smaller or larger fruit. Any reference to “inch” or “inches in diameter” refers to that of a circle of the specified diameter. Any reference to “aggregate area,” “total area,” or “aggregate affected area” means the gathering together of separate areas into one mass for the purpose of comparison to determine the extent affected. The following specific defects shall be considered as serious damage:

(a) The following types and amounts of russetting shall be considered as serious damage:

(1) Smooth solid russetting, when more than one-half of the surface in the aggregate is covered, including any russetting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russetting, which detracts from the appearance of the fruit to a greater extent than the amount of smooth solid russetting permitted: *Provided*, That any amount of russetting shall be permitted on Roxbury Russet and other similar varieties.

(2) [Reserved]

(b) Sunburn or sprayburn which seriously detracts from the appearance of the fruit.

(c) Limb rubs which affect more than one-tenth of the surface in the aggregate.

(d) Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than one-tenth of the surface in the aggregate: *Provided*, That no hail marks which are unhealed shall be permitted and not more than an aggregate area of one-half inch shall be allowed for well healed hail marks where the skin has been broken.

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of one-half inch.

(f) Visible water core which affects an area of more than one-half inch in diameter.

(g) *Disease*: (1) Scab spots which affect a total area of more than three-fourths inch in diameter.

(2) Cedar rust infection which affects a total area of more than three-fourths inch in diameter.

(3) Sooty blotch or fly speck which affects more than one-third of the surface.

(4) Red skin spots which affect more than one-third of the surface.

(5) Bitter pit or Jonathan spot which is thinly scattered over more than one-tenth of the surface.

(h) *Insects*: (1) Healed stings which affect a total area of more than one-fourth inch in diameter including any encircling discolored rings.

(2) Worm holes.

(i) Bruises which are not slight and incident to proper handling and packing, and which are greater than:

(1) 3/8 inch in depth;

(2) 1 1/8 inches in diameter;

(3) any combination of lesser bruises which detract from the appearance or edible quality of the apple to an extent greater than any one bruise described in paragraph (i)(1) or (2) of this section.

(j) Brown surface discoloration when caused by delayed sunburn, surface scald, or any other means and affects an area greater than 3/4 inch in diameter.

§ 51.319 Seriously deformed.

“*Seriously deformed*” means that the apple is so badly misshapen that its appearance is seriously affected.

§ 51.320 Diameter.

When measuring for minimum size, “diameter” means the greatest dimension of the apple measured at right angles to a line from stem to blossom end. When measuring for maximum size, “diameter” means the smallest dimension of the apple determined by passing the apple through a round opening in any position.

U.S. Condition Standards for Export

§ 51.321 U.S. Condition Standards for Export.⁴

(a) Not more than 5 percent of the apples in any lot shall be further advanced in maturity than firm ripe.

(b) Not more than 5 percent of the apples in any lot shall be damaged by storage scab.

(c) Not more than a total of 5 percent of the apples in any lot shall be affected by scald, internal breakdown, freezing injury, or decay; or damaged by bitter pit, Jonathan spot, water core⁵ except

⁴ These standards may be applied to domestic shipments of apples as well as export lots, and may be referred to as “U.S. Condition Standards.”

⁵ “Damage by water core” means externally invisible water core existing around the core and extending to water core in the vascular bundles, or surrounding the vascular bundles when the affected

that invisible water core shall not be scored as damage when these condition standards are applied to the Fuji variety of apples, or other condition factors: *Provided*, That:

(1) Not more than a total of 2 percent shall be allowed for apples affected by decay and soft scald;

(2) Not more than 2 percent shall be allowed for apples affected by internal breakdown;

(d) Container packs shall comply with packing requirements specified in § 51.310 of the United States Standards for Grades of Apples.

(e) Any lot of apples shall be considered as meeting the U.S. Condition Standards for Export if the entire lot averages within the requirements specified: *Provided*, That no package in any lot shall have more than double the percentages specified, except that for packages which contain 10 pounds or less, individual packages in any lot may have not more than three times the tolerance or three apples (whichever is the greater amount).

Metric Conversion Table

§ 51.322 Metric conversion table.

Inches	Millimeters (mm)
1/16 equals	1.6
1/8 equals	3.2
3/16 equals	4.8
1/4 equals	6.4
3/8 equals	9.5
1/2 equals	12.7
5/8 equals	15.9
3/4 equals	19.1
7/8 equals	22.2
1 1/8 equals	28.6
2 1/8 equals	54.0
2 1/4 equals	57.2
2 3/8 equals	60.3
2 1/2 equals	63.5
2 3/4 equals	69.9

Cubic Inches	Cubic Centimeters (cc)
2100 equals	34,412.7
2900 equals	47,522.3

Pounds	Grams (g)
10 equals	4,536.0
37 equals	16,783.2
40 equals	18,144.0

areas surrounding three or more vascular bundles meet or coalesce, or existing in more than slight degree outside the circular area formed by the vascular bundles, or any externally visible water core.

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-29034 Filed 11-18-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Doc. No. AO-368-A29; DA-01-06]

Milk in the Pacific Northwest Marketing Area; Interim Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain pooling provisions of the Pacific Northwest Federal milk order on an interim basis. This interim order implements amendments to the *Pool plant* provisions which establish a cooperative manufacturing plant provision and a procedure for "system pooling" by cooperative manufacturing plants. For the *Producer milk* provisions, this interim order implements amendments that establish a standard of at least 3 days' milk production for the number of days during the month that the milk of a producer needs to be delivered to a pool plant (a "touch-base" standard) in order for the rest of the milk of that producer to be eligible to be diverted to nonpool plants, provides authority to the Market Administrator to adjust the "touch-base" standard, and establishes a year-round diversion limit of 80 percent of total receipts for pool plants. More than the required number of producers in the Pacific Northwest marketing area have approved the issuance of the interim order as amended.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address Gino.Tosi@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Prior documents in this proceeding:

Notice of Hearing: Issued November 14, 2001; published November 19, 2001 (66 FR 57889).

Tentative Final Decision: Issued August 30, 2002; published September 6, 2002 (67 FR 56936).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Pacific Northwest order:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings. It is necessary and in the public interest to make these interim amendments to the Pacific Northwest order effective January 1, 2003. Any delay beyond that date would tend to disrupt the orderly