

# Proposed Rules

Federal Register

Vol. 67, No. 58

Tuesday, March 26, 2002

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-98-303]

#### Apples; Grade Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the United States Standards for Grades of Apples. These standards are issued under the Agricultural Marketing Act of 1946. The proposal would 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 would also delete the provision that apples be "carefully hand-picked." The "U.S. No. 1 Early grade" and the "Unclassified" section would also be deleted. Size specifications would 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 would 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 would be changed by adding variety and grade to required markings on containers. The term "brown surface discoloration" would be added to the provisions which contain the requirements for the various grades of apples. The classification of "Bitter pit" and "Jonathan spot" would be clarified. Also, the U.S. Condition Standards for Export would 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 proposed 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.

**DATES:** Comments must be received by May 28, 2002.

**ADDRESSES:** Interested persons 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; Fax (202) 720-8871, e-mail [FPBDocket\\_clerk@usda.gov](mailto:FPBDocket_clerk@usda.gov). Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** David 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 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. The revisions being proposed 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 initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule would revise the U.S. Standards for Grades of Apples that were issued under the Agricultural Marketing Act of 1946. The proposed amendment of the standards would: revise the basic requirements 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.

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.

This rule proposes several changes to 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 proposed

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 proposed changes. However, the need for revision increases due to ever changing market characteristics, and the proposal 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 proposed 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.

#### Discussion of Proposed Revisions

The current U.S. apple grades (U.S. Extra Fancy, U.S. Fancy, U.S. No. 1, U.S. No. 1 Early, U.S. No. 1 Hail, and U.S. Utility) would remain in the standards. The U.S. No. 1 Early grade would be removed. This grade (Section 51.302 (a)) would be deleted since market surveys performed by the Department have indicated that it is no longer used by the industry.

Section 51.300, U.S. Extra Fancy, Section 51.301, U.S. Fancy, and Section 51.303, U.S. Utility currently state 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. This change is being proposed primarily for the benefit of those shipper/packers that would prefer to pack more than one variety in the same container, such as gift packs of two or more varieties. However, the names of the multiple varieties would be required to be printed on the container. Any packages that contain more than one variety and are not designated as such on the container would fail to grade due to dissimilar varieties.

Sections 51.300, 51.301, and 51.303 also state that the apples must be ". . . carefully handpicked." We propose to

delete this provision and its corresponding definition in § 51.315 because it is difficult to determine if an apple has been "carefully handpicked," especially at points of destination. Further, this requirement was not intended to prevent machine picked apples from making a U.S. grade. The original intent of this phrase was to preclude apples which had fallen from the tree and were laying on the ground (commonly referred to as "drops") from making a U.S. grade. However, the apple industry does not use drops for packing. As a result of the deletion of § 51.315, all sections following this section would be renumbered accordingly.

The Department's Agricultural Handbook 376 states that "Scald is a physiological disease of apples that has been recognized as a serious problem for as long as apples have been stored and marketed commercially. Scald is known by such names as ordinary scald, storage scald, common scald, hard scald (as opposed to the soft scald disease), and superficial scald, although tissues may be killed to 1/4 inch in some varieties."

Sections 51.300, 51.301, and 51.303 currently require that apples be free from "scald" in any of the grades. Although there are many different origins of scald, there are primarily only two types, surface scald and soft scald. Surface scald which only affects the skin of the apple and which is firm in texture, would be included under the definitions of injury, damage, and serious damage, under the term "brown surface discoloration." The word "scald" would be replaced with the phrase "soft scald" in these sections. To meet any of the grades apples would be required to be free from "soft scald."

Many years ago, scald was a serious problem in shipments of apples, especially lots which had been stored for a period of time before shipment or sale. Improved harvesting techniques and anti-scald treatments have substantially limited the presence of scald in apple shipments. Although soft scald results in a disintegration of the flesh, and sometimes also produces a foul odor, surface scald is less objectionable, restricting the area affected to that of the skin. In addition, there are several types of defects which occur simply as brown surface discoloration (i.e., delayed sunburn, which will be discussed in detail below) and which cannot be differentiated by the naked eye. This change is being proposed because it would be more accurate to group these defects together as "brown surface discoloration" than to use the term "scald."

Also, we are proposing to make revisions concerning two physiological

defects known as bitter pit and Jonathan spot. Although bitter pit and Jonathan spot are two separate, nonparasitic or noncontagious diseases, their appearance and effect to the apple are very similar. Therefore, these two defects are treated the same for the purpose of determining the quality based on the U.S. grade standards.

While the origin(s) of these two diseases is not entirely clear, their appearance is unmistakable. Affected apples display grayish brown to black circular spots which may be sunken (pits). Typical spots or pits are  $\frac{1}{16}$  to  $\frac{1}{8}$  inch in diameter, and often in the case of Jonathan spot, these spots will occur around the lenticels. These apples may have from one spot to the entire surface affected. Bitter pit and Jonathan spot are referenced in the standards in three different manners. In the U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 they are listed as "free from" defects (*i.e.*, fruit must be free from these defects to meet the grades.) A description of when bitter pit or Jonathan spot are considered to be "serious damage" appears in Section 51.320. Furthermore, the U.S. Condition Standards for Export reference "damage by" bitter pit or Jonathan spot which does not conform with the U.S. grade standards' basic requirements which use the term "free from."

Therefore, to make the standards more clear and to eliminate any inconsistencies, it is proposed U.S. Extra Fancy, U.S. Fancy, and U.S. No. 1 grades require fruit to be free from damage caused by bitter pit and Jonathan spot, and free from serious damage in the U.S. Utility grade. "Bitter pit or Jonathan spot when one or more spots affects the surface of the apple" would also be added to the defects considered as damage in § 51.317 (g)(5). (This section is currently designated as § 51.319; however, the Section number would be changed due to revisions in text which will be described in detail later in this supplementary information section.) Section 51.320 (g)(5), Serious Damage (proposed § 51.318 (g)(5)) currently provides that "Bitter pit or Jonathan spot which is thinly scattered over more than one-tenth of the surface and does not materially deform or disfigure the fruit" is considered to be serious damage. The section would be revised by removing "does not materially deform . . ." as the form of the fruit should not be considered when determining whether the fruit is seriously damaged by bitter pit or Jonathan spot.

Sections 51.300 and 51.301 each require that apples be free from "bruises except those which are slight and incident to proper handling and

packing." However, bruising is currently scored based on severity (*i.e.*, injury, damage, and serious damage) while slight and incidental bruises (bruises which can be seen by holding the apple at certain angles to light or by slight indentations to the surface which have no apparent effect on the underlying flesh) are not considered as defects which would prevent the fruit from meeting grade.

While the degree of bruising is not defined in the standard, guidelines appear in the Apples Market Inspection and Apples Shipping Point Inspection handbooks. The fruit is considered to be injured if the area affected exceeds  $\frac{5}{8}$  inch in diameter or  $\frac{1}{8}$  inch in depth, damage if the area affected exceeds  $\frac{7}{8}$  inch in diameter or  $\frac{3}{16}$  inch in depth, and serious damage if the area affected exceeds  $1\frac{1}{8}$  inch in diameter or  $\frac{3}{8}$  inch in depth based on an apple with a three inch diameter. Correspondingly greater or lesser amounts are allowed based on the size of the individual apple. In addition, different allowances may be provided based on the type of pack (tray pack, cell pack, or other packs).

Therefore, to clarify and simplify the process of scoring bruises as a defect, §§ 51.300, 51.301, and 51.303 would require fruit to be free from injury, damage, or serious damage defect, by bruising, respectively, and different levels of bruising would be included in the definitions of injury, damage, and serious damage.

Another change proposed in this revision involves the amount of red color needed on red varieties apples for each grade. Currently, several varieties are listed in Table 1 of Section 51.305, Color Requirements. Many of the varieties listed in this table are no longer produced commercially. In addition, newer varieties have been marketed which are not listed in this table. This has led to questions as to the application of color requirements over the years, and their usefulness in application. After several years of research and surveys, the Department and the USAA Grades and Standards Committee (USAA GSC) believe they have developed a system that will best suit the needs of all apple marketers.

The proposed method will determine color requirements only for those varieties produced in commercial volume which have historically been marketed based on their color attributes. The USAA GSC has proposed a list consisting of the following twelve varieties: Red Delicious, Red Rome, Empire, Idared, Winesap, Jonathan, Stayman, McIntosh, Cortland, Rome Beauty, Delicious, and York. All other varieties would have no color

requirements in determining the grade, although the color requirements of these other varieties may be specified between marketers.

The method or process used to determine color requirements for the twelve varieties of apples previously mentioned would remain basically unchanged. However, the Department is currently working on designing a new color comparator which will be applicable to these twelve varieties (the current version is only applicable to 6 different varieties). These color standards will be available for examination during the comment period in the Fresh Products Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture South Building, Washington, D.C. 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. In addition, the USAA GSC has provided suggested percentages of color required for the specified varieties. Finally, a new footnote would be added to the color requirements table in reference to "varietal name designations." Varietal name designations refers to hybrid or sport varieties, or varietal names which contain one of the twelve listed varieties as a portion of the name. The footnote specifies that varietal designations of the twelve listed varieties must meet or exceed those color requirements listed for the original variety (*e.g.*, a varietal designation of Royal Winesap would be required to meet the same color requirements as designated for Winesap).

Section 51.306, Unclassified, would be removed. The Department has been removing sections in revised standards that make reference to "Unclassified" to eliminate any misunderstanding that this term designates an actual grade name. The term "Unclassified" is not an actual grade classification but was originally set out in the standards for use when no definite grade had been assigned to a given lot. Removing this entry would result in all sections following it to be renumbered by decreasing the Section number by one unit (*i.e.*, the following § 51.307 Tolerances, will now become § 51.306).

Another area within the standard that we propose to revise involves size requirements. Based on the current size requirements for lots designated by numerical count, § 51.307 (c) provides that not more than 5 percent of the apples in a lot may vary more than  $\frac{1}{4}$  inch in diameter. To determine if a lot has met this requirement, every apple must be sized and recorded so that it may be determined where, among all

apples sampled, the one-quarter inch variation lies. After determining where the variation is, the total number of apples outside this variation must be tallied.

We propose to revise the size section to provide for a much simpler process to determine uniformity. First, the diameters of the smallest and largest apple in the package would be determined. If the range between these two apples is  $\frac{1}{2}$  inch or less, the sample will be described as "fairly uniform." If the range between these two apples is greater than one-half inch, the sample would be described as "irregular." It is proposed that not more than 10 percent of the samples in the lot may fail to meet fairly uniform.

Also, weight equivalents would now be used for the Red Delicious and Golden Delicious varieties. These two varieties, due to their characteristic shape, can often be elongated (sometimes referred to as "typie" by apple handlers) rather than wide. The result is a product that actually has more edible flesh but is still unable to meet minimum diameter size requirements. The USAA has proposed a list of weight equivalents based on reference data from actual tests and surveys. These weights would appear in Table II of the proposed § 51.306(c), (currently § 51.307 (c)) along with their corresponding diameter measurement.

When this designation is used, an individual apple would be considered to have met the minimum size requirement if the apple is smaller than the minimum diameter, provided it is equal to or greater than the minimum weight. Likewise, an apple not meeting the minimum weight designation would also be considered to have met the minimum size requirement if the apple is equal to or larger than the corresponding minimum diameter. However, not more than five percent of the apples in any lot would be allowed to fail to meet both minimum diameter and minimum weight when so designated. In addition, when Red Delicious or Golden Delicious apples are designated with diameter/weight combination, they would only be designated according to the combinations listed in Table II.

Another proposed revision to the standards affects the application of tolerances. The application of tolerances allows for an occasional sample with defects exceeding the lot tolerance, provided the lot averages within lot tolerances as a whole. However, the current application of tolerances for packages which contain 10 pounds or less, allows more than an occasional excess. It states, "Not over 10 percent of

the packages may have more than three times the tolerance specified, except that at least one defective apple may be permitted in any package: *Provided*, That not more than one apple or more than 6 percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown." This could permit up to 100 percent defects in samples or packages that represent less than 10 percent of the packages in the lot.

Therefore, a more restrictive and appropriate Application of Tolerances for this situation is proposed. Section 51.307 (b)(1) (currently designated § 51.308 (b)(1)) would be revised to provide "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."

Proposed Section 51.308 (currently 51.309), Calculation of percentages, designates how the apples are to be sampled based on various characteristics of the lot, and, ultimately, how the percentages are determined based on the sampling method. Currently, the section states that when numerical count is marked on the container, percentages will be calculated on the basis of count and all other cases are based on weight or an equivalent basis. However, sampling for consumer size packages (consumer size packages are generally considered as packages weighing ten pounds or less) is not specifically addressed. Therefore, we propose to revise § 51.308. First, the title of the section would be changed to "Methods of sampling and calculation of Percentages" to more accurately reflect the contents of the section. Second, to specifically address the situation of consumer size packages, as well as any other basis for determining percentages, it is proposed that § 51.308 be revised to read as follows:

"(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  $\frac{1}{2}$  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."

Section 51.312, Marking requirements, currently states that the numerical count or minimum diameter

of the apples packed in a closed container shall be indicated on the container. The USAA GSC believes that requiring the count or diameter to be marked on the container is not sufficient for today's market, and that the grade and variety should also be plainly marked on the outside of the container. It is also necessary to revise this section to provide for the newly-proposed weight/diameter size classifications for Red Delicious and Golden Delicious varieties, and to provide for packages that contain more than one variety.

Therefore, we propose to revise § 51.312 (redesignated as § 51.311) to read as follows: "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 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." Paragraph (b) of this section remains unchanged.

Proposed §§ 51.316, 51.317, and 51.318 (currently §§ 51.318, 51.319, and 51.320) define terms of injury, damage, or serious damage. These sections would also be revised to reflect the changes concerning bruising, brown surface discoloration, bitter pit, and Jonathan spot as indicated in the earlier discussion of this supplementary information section.

Finally, proposed § 51.321, U.S. Condition standards for export (currently § 51.323), is a separate set of requirements that may be used for both exported and domestic shipments of apples. These requirements are not mandatory for exports or domestic shipments, but are provided as an optional classification for lots of apples. Only one change that pertains

specifically to providing 2 percent allowance for apples affected by slight scald is proposed in this section. Paragraph (c)(3) of this section states that "Not more than 2 percent shall be allowed for apples affected by slight scald." Deleting this is necessary to clarify reference to scoring scald in the U.S. Condition Standards for Export and to make them consistent with the revisions being proposed within the standards. The inclusion of brown surface discoloration in the standards would encompass the various types of scald, making current paragraph (c)(3) of this section unnecessary.

Accordingly, AMS proposes to amend the United States Standards for Grades of Apples as follows:

#### 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 proposed to be 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. In part 51, Subpart—United States Standards for Grades of Apples for processing is revised to read as follows:

#### Subpart—United States Standards for Grades of Apples

##### Grades

- Sec.
- 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 Fairy 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 similar varietal characteristics (except when the name of more than one variety appears 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 similar varietal characteristics (except when the name of more than one variety appears 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 similar varietal characteristics (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 grades in §§ 51.300 through 51.303 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, D.C. 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 I

Only the varieties listed in this table 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

<sup>1</sup> Variations on varietal designations listed in this table 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.<sup>1</sup> 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

<sup>1</sup> "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.

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 $\frac{1}{8}$ inches or 65 grams.	63 grams
2 $\frac{1}{4}$ inches or 75 grams.	70 grams
2 $\frac{3}{8}$ inches or 84 grams.	82 grams
2 $\frac{1}{2}$ inches or 100 grams.	95 grams
2 $\frac{5}{8}$ inches or 115 grams.	109 grams
2 $\frac{3}{4}$ 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) 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  $\frac{1}{2}$  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 tight<sup>2</sup> or fairly well filled.<sup>3</sup>

(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

<sup>2</sup> "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  $\frac{3}{4}$  inch below the top edge of the carton.

<sup>3</sup> "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.

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) Receding 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 receding. Smooth net-like receding 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 receding shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like receding when the appearance is affected to a greater extent than the amount permitted in this paragraph.

(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 receding.

(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 (e)(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 in this paragraph (a).

(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 amount permitted in this paragraph (a).

(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 (g)(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)  $\frac{3}{8}$  inch in depth;
- (2)  $1\frac{1}{8}$  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  $\frac{3}{4}$  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.<sup>4</sup>

(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 core<sup>5</sup> except 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

<sup>4</sup> 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.”

<sup>5</sup> “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 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.

in any lot may have not more than three times the tolerance or three apples (whichever is the greater amount).

#### § 51.322 Metric conversion table.

METRIC CONVERSION TABLE

Inches	Millimeters (mm)
§ 51.322 Metric conversion table. .	
1/16 equals .....	1.6
1/8 equals .....	3.2
3/16 equals .....	4.8
1/4 equals .....	6.4
5/16 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

Dated: March 18, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-7221 Filed 3-25-02; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 772

[FHWA Docket No. FHWA-2000-8056]

RIN 2125-AE80

#### Procedures for Abatement of Highway Traffic Noise and Construction Noise

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Termination of proposed rulemaking.

**SUMMARY:** This document terminates a rulemaking proceeding to revise noise regulations relating to the noise insulation of private residences. The agency undertook this action to consider allowing Federal participation in the

noise insulation of private residences when a traffic noise impact occurs, i.e., when predicted traffic noise levels approach or exceed the FHWA noise abatement criteria or when the predicted traffic noise levels substantially exceed the existing noise levels. Currently, Federal participation in the noise insulation of private residences is allowable only in situations where severe traffic noise impacts exist or are expected, and normal abatement measures are physically infeasible or economically unreasonable. The agency has determined that the proposed change would establish a highly controversial funding policy and would add tremendous cost to the highway program. Accordingly, we are terminating the rulemaking proceeding and closing the docket.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Armstrong, Office of Natural Environment, HEPN-20, (202) 366-2073, or Mr. Robert Black, Office of the Chief Counsel, HCC-30, (202) 366-1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

The FHWA noise regulations were developed as a result of the Federal-Aid Highway Act of 1970 (Pub. L. 91-605, 84 Stat. 1713) and apply to projects where a State department of transportation has requested Federal funding for participation in the project. Under the FHWA noise requirements found at 23 CFR part 772, the State DOT must determine if there will be traffic noise impacts in areas adjacent to federally-aided highways when a project is proposed for the construction of a highway on a new location or the reconstruction of an existing highway to either significantly change the horizontal or vertical alignment or increase the number of through-traffic lanes. Such a project is termed a "Type I" project. If the State DOT identifies potential traffic noise impacts, it must consider noise abatement measures and implement the measures when they are determined to be reasonable and feasible.

Federal law and the FHWA regulations do not require the State DOTs to implement noise abatement along existing highways. However, they may voluntarily initiate this type of abatement, termed a "Type II" project, but they are solely responsible for making this decision. Federal

participation in the funding of such projects is limited to those that propose abatement measures along lands that were developed or were under substantial construction before approval of the acquisition of the right-of-way for, or construction of, the existing highway.

Noise abatement measures which may be incorporated in "Type I" and "Type II" projects include the following: (1) Traffic management measures (e.g., traffic control devices and signing for prohibition of certain vehicle types, time-use restrictions for certain vehicle types, modified speed limits and exclusive land designations); (2) alteration of horizontal and vertical alignments; (3) acquisition of property rights (either in fee or lesser interest) for construction of noise barriers; (4) construction of noise barriers (including landscaping for aesthetic purposes), whether within or outside the highway right-of-way; (5) acquisition of real property or interests therein (predominately unimproved property) to serve as a buffer zone to preempt development which would be adversely impacted by traffic noise (this measure may be included in "Type I" projects only); and (6) noise insulation of public use or nonprofit institutional structures.

In establishing the noise regulations, the FHWA limited routine noise insulation to public use or nonprofit institutional structures in an effort to balance what is desirable from an environmental perspective with what is reasonable fiscally, i.e., balance noise reduction benefits with overall program costs. However, there may be situations where: (1) Severe traffic noise impacts exist or are expected, and (2) the abatement measures listed above are physically infeasible or economically unreasonable. In these instances, the FHWA may approve a State's request for unusual or extraordinary abatement measures on a case-by-case basis. When considering extraordinary abatement measures, the State must demonstrate that the affected activities experience traffic noise impacts to a far greater degree than other similar activities adjacent to highway facilities. For example, residential areas experience absolute noise levels of at least 75 decibels or residential areas experience noise level increases of at least 30 decibels over existing noise levels. The noise insulation of private residences is an example of an extraordinary abatement measure.

#### The Advance Notice of Proposed Rulemaking (ANPRM)

On December 28, 2000, the FHWA issued an ANPRM, at 65 FR 82301, to seek comment on allowing the use of