

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. # FV-00-303]

Peaches, Plums, and Nectarines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Peaches, the United States Standards for Grades of Fresh Plums and Prunes, and the United States Standards for Grades of Nectarines. These standards are issued under the Agricultural Marketing Act of 1946. The changes being proposed are based on the findings of a California Tree Fruit Agreement (CTFA) Task Force that was formed to review the standards and on subsequent discussions with industry. This document also contains conforming and editorial changes.

DATES: Comments must be received by November 25, 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 Ave. SW, Room 2065 South Building, STOP 0240, Washington, DC 20250; Fax (202) 720-8871, E-mail FPB.DocketClerk@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 L. Priestester, at the above address or call (202) 720-2185; E-mail 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 Peaches, the United States Standards for Grades of Fresh Plums and Prunes, and the United States Standards for Nectarines from the CTFA. The United States Standards for Grades of Peaches has not had a major revision since June 1952. There was a minor revision in 1995. The United States Standards for Grades of Fresh Plums and Prunes were last revised in June 1973, and the United States Standards for Grades of Nectarines were last revised April 1966. The CTFA is an industry association representing over 2,000 individual growers, packers and shippers. The CTFA has requested that these standards be revised to bring them into conformity with current packing, marketing and cultural practices. This request also has the support of the California Plum Marketing Board, Peach Commodity Committee, and the Nectarine Administrative Committee. The revisions being proposed will benefit all aspects of the peach, plum, prune, and nectarine industries making 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 will revise the U.S. Standards for Grades of Peaches, the U.S. Standards for Grades of Fresh Plums and Prunes and the U.S. Standards for Grades of Nectarines that were issued under the Agricultural Marketing Act of 1946. Standards issued under the 1946 Act are voluntary.

There are approximately 400 handlers of peaches, plums and nectarines and approximately 2,200 producers of these fruits in the United States. 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 majority of these handlers and producers may be classified as small entities.

This proposed rule would: delete the "Unclassified" section; establish a 25-count minimum sample; revise standard pack and size requirements for all three grade standards; develop en route or at destination tolerances for grades of peaches; define damage and serious damage by discoloration and growth cracks for grades of plums and prunes; revise color requirements for grades of nectarines.

The effects of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities.

This proposed action would make the standards more consistent and uniform with marketing trends and practices. This proposed action will not impose any additional reporting or recordkeeping requirements on either small or large peach, plum, prune, or nectarine producers or handlers. USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there are marketing programs which regulate the handling of nectarines and peaches under 7 CFR Parts 916 and 917. Nectarines and peaches under the marketing order have to meet certain requirements set forth in the grade standards for nectarines and peaches.

Alternatives were considered for this action. One alternative would be to not issue a rule. However, the need for revisions have increased as a result of changing marketing characteristics by

industry, and the proposal is the result of input from all sectors of the peach, plum, prune, and nectarine industries and government. Further, since the purpose of these standards is to facilitate the marketing of agricultural commodities in the U.S., not revising the standards could result in confusion in terms of industry marketing and the proper application of the grade standards.

Background and Proposed Rule

The United States Standards for Grades of Peaches has not had a major revision since June 1952. There was a minor revision in 1995. The United States Standards for Grades of Fresh Plums and Prunes were last revised in June 1973, and the United States Standards for Grades of Nectarines were last revised April 1966. In May 2000, AMS received a request to update and

revise the United States Standards for Grades of Peaches, the United States Standards for Grades of Fresh Plums and Prunes, and the United States Standards for Grades of Nectarines from the CTFA. The CTFA is an industry association representing over 2,000 individual growers, packers and shippers. The CTFA, acting on behalf of the California industry, formed a task force to review the U.S. grades standards peaches, plums and prunes, and nectarines. AMS and its State cooperator in California has been working with the CTFA in the updating and review of the U.S. grade standards. The CTFA has requested that these standards be revised to bring them into conformity with current packing, marketing and cultural practices. The revisions being proposed would benefit all aspects of the peach, plum, prune,

and nectarine industries making the standards current with today's marketing trends and practices.

This rule proposes a number of changes in the U.S. standards. This proposed rule would: delete the "Unclassified" section; establish a 25-count minimum sample; revise standard pack and size requirements for all three grade standards; develop en route or at destination tolerances for grades of peaches; define damage and serious damage by discoloration and growth cracks for grades of plums and prunes; revise color requirements for grades of nectarines. In an effort to clearly outline these proposed changes the first column of the following chart shows the section as it currently reads. The second column shows the proposed change and the third column states why the change is being proposed.

Current standard	Proposed	Discussion
United States Standards for Grades of Peaches		
§51.1210 U.S. Fancy. (b) In order to allow for variations incident to proper grading and handling, not more than 10 percent, by count, of the peaches in any lot may fail to meet the requirements of this grade other than for color, but not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, and not more than one-fifth of this amount, or 1 percent, shall be allowed for decay at shipping point: <i>Provided</i>, That an additional tolerance of 2 percent shall be for soft, overripe, or decayed peaches en route or at destination. In addition, not more than 10 percent, by count, of the peaches in any lot may be below the specified color requirement.	Revise language and move to separate Tolerance section. (See "Tolerance" section.)	Currently the tolerances for each of the grades are in different sections within the standards. It is proposed that a "Tolerance" section be created. This would make for easier referencing and be consistent with other fruit and vegetable standards.
§51.1211 U.S. Extra No. 1. (a) In order to allow for variations incident to proper grading and handling, not more than 10 percent, by count, of the peaches in any lot may fail to meet the requirements of U.S. No. 1 grade, but not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, and not more than one-fifth of this amount, or 1 percent, shall allowed for decay at shipping point: <i>Provided</i>, That an additional tolerance of 2 percent shall be allowed for soft, overripe or decayed peaches en route or at destination. No part of any tolerance shall be used to reduce for the lot as a whole the 50 percent of peaches required to have not less than one-fourth of the surface showing blushed, pink or red color, but individual packages may contain not less than 40 percent of peaches having this amount of color: <i>Provided</i>, That the entire lot averages not less than 50 percent	Revise language and move to separate Tolerance section. (See "Tolerance" section.)	Currently the tolerances for each of the grades are in different sections within the standards. It is proposed that a "Tolerance" section be created. This would make for easier referencing and be consistent with other fruit and vegetable standards.

Current standard	Proposed	Discussion
§ 51.1212 U.S. No. 1. (a) In order to allow for variations incident to proper grading and handling, not more than 10 percent, by count, of the peaches in any lot may fail to meet the requirements of this grade, but not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, and not more than one-fifth of this amount, or 1 percent, shall be allowed for decay at shipping point: <i>Provided</i>, That an additional tolerance of 2 percent shall be allowed for soft, overripe, or decayed peaches en route, or at destination.	Revise language and move to separate Tolerance section. (See "Tolerance" section.)	Currently the tolerances for each of the grades are in different sections within the standards. It is proposed that a "Tolerance" section be created. This would make for easier referencing and be consistent with other fruit and vegetable standards.
§ 51.1213 U.S. No. 2. (a) In order to allow for variations incident to proper grading and handling, not more than 10 percent, by count, of the peaches in any lot may fail to meet the requirements of this grade, but not more than one-tenth of this amount, or 1 percent, shall be allowed for decay at shipping point: <i>Provided</i>, That an additional tolerance of 2 percent shall be allowed for soft, overripe, or decayed peaches en route or at destination.	Revise language and move to separate Tolerance section. (See "Tolerance" section.)	Currently the tolerances for each of the grades are in different sections within the standards. It is proposed that a "Tolerance" section be created. This would make for easier referencing and be consistent with other fruit and vegetable standards.
Unclassified § 51.1214 Unclassified. "Unclassified" consists of peaches which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no definite grade has been applied to the lot.	Delete the title "Unclassified" and all reference to unclassified. Revise section to read as follow: § 51.1214 Tolerances. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified: (a) U.S. Fancy, U.S. Extra No. 1, and U.S. No. 1 grades. (1) For defects at shipping point. 10 percent of the peaches in any lot may fail to meet the requirements of the specified grade: <i>Provided</i>, That included in this amount, 5 percent shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for peaches which are affected by decay. (2) For defects en route or at destination. 14 percent for peaches in any lot that fail to meet the requirements of the grade: <i>Provided</i>, That included in this amount not more than the following percentages shall be allowed for defects listed: (i) 10 percent for permanent defects; (ii) 7 percent for defects causing serious damage, included therein not more than 5 percent for serious damage by permanent defects, and not more than 2 percent for soft, overripe, or decayed peaches. (3) For color. (i) U.S. Fancy grade. 10 percent for peaches in any lot which fails to meet the requirements of the grade. (ii) U.S. Extra No. 1 grade. Individual packages may contain not less than 40 percent of peaches which meet the requirements of the grade: <i>Provided</i>, That the entire lot averages not less than 50 percent. (b) U.S. No. 2 grade. (1) For defects at shipping point. 10 percent of the peaches in any lot may fail to meet the requirements of this grade: <i>Provided</i>, That included in this amount not more than 1 percent for peaches which are affected by decay.	When changing or updating standards in recent years, references to "Unclassified" have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that "Unclassified" is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated. Section 51.1214 is redesignated as the tolerance section. As previously stated, creating a "Tolerance" section makes referencing easier. Instead of providing tolerances in several different sections within the standards, consolidating the tolerances into one section is proposed. The proposed addition of the phrase "a minimum 25 count sample" establishes a basis for sampling uniformity. Also, the proposed establishment of an "En Route or At Destination" tolerance will be consistent with similar standards.

Current standard	Proposed	Discussion
§ 51.1216 Size requirements. (a) The numerical count or the minimum diameter of the peaches packed in a closed container shall be indicated on the container. § 51.1217 Standard pack. (c) Peaches packed in standard western boxes shall be reasonably uniform in size and arranged in the packages according to the approved and recognized methods. Each wrapped peach shall be fairly well enclosed by its individual wrapper. All packages shall be well filled and tightly packed but the contents shall not show excessive or unnecessary bruising because of over-filled packages. The number of peaches in the box shall not vary more than 4 from the number indicated on the box. (g) In order to allow for variations incident to proper packing, not more than 10 percent of the packages in any lot may not meet these requirements.	(2) For defects en route or at destination. 14 percent for peaches in any lot that fail to meet the requirements of the grade. <i>Provided</i>, That included in this amount not more than the following percentages shall be allowed for defects listed: (i) 10 percent for permanent defects; (ii) 2 percent for peaches which are affected by soft, overripe, or decay. § 51.1216 Size requirements. (a) The numerical count or a count-size based on equivalent tray pack size designations or the minimum diameter of the peaches packed in a closed container shall be indicated on the container. No change. (g) Peaches packed in loose or volume filled boxes shall be uniform in size and well filled. (h) In order to allow for variations incident to proper packing, not more than 10 percent of the packages in any lot may not meet these requirements. (i) "Well filled" means that the peaches are packed within 1 inch from the top of the container.	Adding "or a count-size based on equivalent tray size designations" is proposed to reflect current packaging practices. Industry requested "well filled" be defined here as well as in paragraph "(g)" of this section. We propose adding this definition as a separate paragraph "(i)" for easier referencing. Also, this would enable the definition to be stated once which is consistent with other definitions in the standards. Adding reference to "loose" and "volume" filled packs to reflect industry's current packaging practices is proposed. Due to this addition paragraph "(g)" is redesignated as paragraph "(h)." As previously stated, industry requested "well filled" be defined here and in paragraph "(c)" of this section. We propose adding this definition as a separate paragraph "(i)" for easier referencing. Also, this would enable the definitions to be stated once which is consistent with other definition in the standards. As previously stated, paragraph "(g)" is being redesignated as paragraph "(h)" due to the additional type of package being added to this section. Industry has requested a definition for "well filled" be added to the standard after the term well filled in § 51.1215 "(c)" and "(g)." We propose adding this definition as a separate paragraph "(i)" for easier referencing. Also, this would enable the definition to be stated once which is consistent with other definitions within the standards.

United States Standards for Grades of Fresh Plums and Prunes

§ 51.1524 Unclassified. "Unclassified" consists of plums or prunes which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot. § 51.1525 Tolerances. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:	§ 51.1524 (Reserved). § 51.1525 Tolerances. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:	When changing or updating standards in recent years, references to "Unclassified" have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that "Unclassified" is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated. The proposed addition of the phrase "a minimum 25 count sample" establishes a basis for sampling uniformity.
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Current standard	Proposed	Discussion
§ 51.1527 Standard pack. (a) Packing. (1) All packages shall be tightly packed or well filled, according to the approved and recognized methods. (a)(3) Four-basket crates. Four-basket crates shall not be packed more than three layers deep. (3)(i) The arrangement of the bottom layer shall be one row less one way, and may be one row less each way than the arrangement of the top layer; the arrangement of the middle layer may be the same as the top layer, or may be one row less one way than the arrangement of the top layer. (ii) In the 3½—4x5 and 3½—4x4 packs the face of each half of the crate shall be packed as a unit, with not shim between the two baskets. (b) Marking. (1) The size of plums or prunes shall be marked on each package, and shall be indicated in terms of minimum diameter, or number of fruits per package, or in accordance with the arrangement of the top layer of fruit in the package or subcontainer, or in terms of the four-basket crate designation for fruit of equivalent sizes. Size may also be shown in terms of maximum number of fruit for a specified weight, such as "8 per pound," "6.4 per pound" or "7⅔ per pound." (i) Four-basket crates. The size of plums packed in four-basket crates shall be indicated in accordance with the arrangement in the top layer of the baskets, as follows: 6x6, 5x5, or 4x4 (square packs); 5x6, 4x5, or 3x4, (offset packs); 3½—4x5, 3—4x5, 3½—4x4, or 3—4x4 (diagonal packs). (ii) California peach boxes, lug boxes and small consumer packages. In layer-packed California peach boxes or lug boxes, and in small consumer packages, the count of the entire contents shall be marked on the package. The number of plums or prunes in California peach boxes or lug boxes shall not vary more than 4 from the number indicated on the package.	No change. (3) "Well filled" means that the plums or prunes are packed within 1 inch from the top of the container. Delete. Delete. (4) "Tightly packed" means the plums or prunes are the proper size for the mold or cell compartments in which they are packed, and the molds or cells are filled in such a way that movement is not allowed. (b) Marking. (1) The size of plums or prunes shall be marked on each package, and shall be indicated in terms of minimum diameter, or number of fruit per package, or in accordance with the arrangement of the top layer of fruit in the package or subcontainer. Size may also be shown in terms of maximum number of fruit for a specified weight, such as "8 per pound," "6.4 per pound" or "7⅔ per pound" or by a count-size designation based on the number of fruits contained in a 10 pound sample with the designation rounded to an applicable number which is divisible by 5 (example: 40 size, 45 size, 50 size, 55 size, etc.). (i) California peach boxes, lug boxes and small consumer packages. In layer-packed California peach boxes or lug boxes, and in small layer packed consumer packages, the count of the entire contents shall be marked on the package. The number of plums or prunes in California peach boxes or lug boxes shall not vary more than 4 from the number indicated on the package. Loose filled consumer packs not in a master container shall have a count-size marked on the package or on a tag closure. Master containers of loose filled consumer packages shall have a count-size marked on the package describing the size of plums or prunes within the container. (ii) Face and fill packs in cartons and lug boxes. In face and fill packs in cartons and lug boxes the number of rows in the face shall be marked on the package, as "6 row," "8 row," etc.	Industry has requested a definition for "well filled" be added to this paragraph, however we propose adding this definition as a separate paragraph "(3)" for easier referencing. Also, this is consistent with the way in which other definitions are stated in the standards. Deleting reference to "four basket crates" is proposed as this type of pack is no longer used by industry. Industry has requested a definition for "well filled" be added to paragraph (1) of this section. We propose redesignating (3) for defining "well filled." This is consistent with other definitions in the standards as they are stated separately and it also makes for easier referencing. This deletion is proposed as this type of pack is no longer being used by industry. This deletion is proposed as this type of pack is no longer being used by industry. The industry has requested that a definition for "well filled" be added to the standards. We propose also adding a definition for "tightly packed" because of the option given in Section § 51.1567(a)(1) of "tightly packed or well filled." Deleting reference to "four basket crates" is proposed as this type of pack is no longer used by industry. The adding of a reference to counter-size designation markings is proposed to reflect current packaging practices. Deletion of information concerning "four-basket crates" is proposed as this type of pack is no longer used by industry. Due to this deletion, paragraph "(ii)" would be redesignated as "(i)." Additionally, adding "layer packed" and marking instructions for loose filled consumer packages is proposed as it reflects current marketing and packing practices. Due to the redesignating of paragraph "9ii)" paragraph "(iii)" would be redesignated as "(ii)."

Current standard	Proposed	Discussion
(iii) Face and fill packs in cartons and lug boxes. In face and fill packs in cartons and lug boxes the number of rows in the face shall be marked on the package, as "6 row," "8 row," etc. (c) Sizing. (1) Not more than 5 percent, by count, of the plums or prunes in any package may vary more than one-fourth inch in diameter.	(c) Sizing. (1) Not more than 5 percent, by count, of the plums or prunes in any package may vary more than one-fourth inch in diameter, except that not more than 5 percent, by count, of the plums or prunes 2¼ inches or larger in diameter and packed in loose or volume filled containers may vary more than three-eighths inch in diameter.	There would be no paragraph "(iii)" due to the redesignation of preceding paragraphs. Industry has requested the addition of a three-eighths inch variance for plums and prunes 2¼ inch in diameter or larger.
§ 51.1532 Damage	(c) (6) When extending from within to outside the stem cavity, when more than three-eighths inch in length if the major portion of the crack is within the stem cavity or when more than one-fourth inch in length if the major portion of the crack is outside the stem cavity;	Currently there is no specific guideline for growth cracks occurring in this manner. Adding specific scoring criteria would provide an objective means of evaluating this defect.
(e) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-fourth inch in diameter or a fruit 2 inches in diameter or 4x4 size, or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter or 4 × 4 size;	(e) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
(h)(1) Dark or rough scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or 4x4 size or smaller; or when the area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size;	(h) (1) Dark or rough scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
(2) Fairly light colored, fairly smooth scars when, in the case of Italian type prunes, the area exceeds that of a circle one-half inch in diameter; or when, in the case of other types of plums, the area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle five-eighths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size.	(2) Fairly light colored, fairly smooth scars when, in the case of Italian type prunes, the area exceeds that of a circle one-half inch in diameter; or when, in the case of other types of plums, the area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle five-eighths inch in diameter on a fruit larger than 2 inches in diameter.	This deletion is proposed as this type of pack is no longer being used by industry.
(3) Light colored, smooth scars when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums, the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle seven-eighths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size;	(3) Light colored, smooth scars when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums, the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle seven-eighths inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
(i)(1) Rough russetting when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size;	(i)(1) Rough russetting when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
(2) Slightly rough russetting when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums, the area exceeds that of a circle five-eighths inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size;	(2) Slightly rough russetting when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums, the area exceeds that of a circle five-eighths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.

Current standard	Proposed	Discussion
(3) Fairly smooth or smooth russetting when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle 1 inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size.	(3) Fairly smooth or smooth russetting when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle 1 inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
§51.1536 Serious damage.	(j) Discoloration when greenish to brown definitely contrasting with the normal surface color of the fruit and affecting more than 10 percent of the surface. (c)(5) When extending from within to outside the stem cavity, when healed and aggregating more than five-eighths inch in length if the major portion of the crack is within the stem cavity or when healed and aggregating more than one-half inch in length if the major portion of the crack is outside the cavity;	This defect is currently being scored based on the "general definition." Adding specific scoring criteria would provide an objective means of evaluating this defect. Currently there is no specific guideline for growth cracks occurring in this manner. Adding specific scoring criteria would provide an objective means of evaluating this defect.
(e) Scab or bacterial spot, when the aggregate area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the aggregate area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size;	(e) Scab or bacterial spot, when the aggregate area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
(h)(1) Dark or rough scars or rough russetting when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle one inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size;	(h)(1) Dark or rough scars or rough russetting when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
	(l) Discoloration when greenish to brown definitely contrasting with the normal surface color of the fruit and affecting more than 25 percent of the surface.	This defect is currently being scored based on the "general definition." adding specific scoring criteria would provide an objective means of evaluating this defect.

United States Standards for Grades of Nectarines

§51.3145 U.S. Fancy. (a) In the case of the John Rivers variety each nectarine shall show some blushed or red color. In the case of other varieties each nectarine shall have not less than one-third of its surface showing red color characteristic of the variety. (See §51.3150.)	(a) Each nectarine shall have not less than one-third of its surface showing red color characteristic of the variety. (See §51.3150.)	Deleting reference to the John Rivers variety is proposed as it is no longer of commercial importance.
§51.3146 U.S. Extra No. 1. (a) In the case of the John Rivers variety at least 50 percent of the nectarine in any lot shall show some blushed or red color. In the case of other varieties at least 75 percent of the nectarines in any lot shall show some blushed or red color including therein at least 50 percent of the nectarines with not less than one-third of the fruit surface showing red color characteristic of the variety. (See §51.3150.)	(a) At least 75 percent of the nectarines in any lot shall show some blushed or red color including therein at least 50 percent of the nectarines with no less than one-third of the fruit surface showing red color characteristic of variety. (See §51.3150.)	Deleting reference to the John Rivers variety is proposed as it is no longer of commercial importance.
§51.3147 U.S. No. 1. (a) At least 75 percent of the nectarines in any lot shall show some blushed or red color, except that there are no color requirements for nectarines of the John Rivers variety in this grade. (See §51.3150.)	Delete.	Delete paragraph "(a)" containing color requirements is proposed as many new varieties do not show a red blush color. This deletion would allow varieties of this type to meet the requirements of U.S. No. 1 grade. Also, deleting reference to the John Rivers variety is proposed as it is no longer of commercial importance.

Current standard	Proposed	Discussion
§ 51.3148 U.S. No. 2. (a) There are no color requirements for nectarines in this grade. (See § 51.3150.) § 51.3149 Unclassified. “Unclassified” consists of nectarines which have not been classified in accordance with any of the foregoing grades. The term “unclassified” is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot. § 51.3150 Tolerances. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified: (3)(ii) U.S. Extra No. 1 grade and U.S. No. 1 grade. Individual containers may contain not more than 10 percentage points less than the required percentage of nectarines showing the amount of color specified for the respective grade: <i>Provided</i>, That the entire lot averages not less than the required percentage of nectarines showing the specified color for the grade. § 51.3152 Standard pack. (a) Nectarines shall be fairly uniform in size and shall be packed in boxes, lugs, crates, cartons, or baskets and arranged according to the approved and recognized methods. All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising resulting from overfilling. The nectarines in the shown face shall be reasonably representative in size, color and quality of the contents of the container. Each wrapped fruit shall be fairly well enclosed by its individual wrapper. (b) When packed in closed containers, the size shall be indicated by marking the container with the numerical count, the pack arrangement, or the minimum diameter or minimum and maximum diameters in terms of inches and not less than one-eighth fractions of inches. (d) Four-basket crates: (1) The size of nectarines packed in four-basket crates shall be indicated as follows: 3x4, 3—4x4, 3—4x5, 4x4, etc., in accordance with the arrangement in the top layer of the basket. These packs shall not be more than three layers deep.	Delete. § 51.3149 (Reserved) § 51.3150 Tolerances. In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified: (3)(ii) U.S. Extra No. 1 grade and when specified in connection with a grade. Individual containers may contain not more than 10 percentage points less than the required percentage of nectarines showing the amount of color specified for the grade: <i>Provided</i>, That the entire lot averages not less than the required percentage of nectarines showing the specified color for the grade. § 51.3152 Standard pack. (a) Nectarines shall be fairly uniform in size and shall be packed in boxes, lugs, crates, or cartons and arranged according to the approved and recognized methods. All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising resulting from overfilling. The nectarines in the shown face shall be reasonably representative in size, color and quality of the contents of the container. (b) When packed in closed containers, the size shall be indicated by marking the container with the numerical count, the pack arrangement, or the minimum diameter or minimum and maximum diameters in terms of inches and not less than one-eighth fractions of inches, or a count-size based on equivalent tray pack size designations. (d) “Well filled” means that the nectarines are packed within 1 inch from the top of the container. Delete.	U.S. standards typically state that is required opposed to what is “not” a requirement of the grade. If there are no color requirements stated then it is assumed there are no color requirements. When changing or updating standards in recent years, references to “Unclassified” have been removed in an attempt to eliminate the confusion this term creates. People have incorrectly assumed that “Unclassified” is an actual grade name; it is not. To avoid further confusion, it is proposed that all references to this term be eliminated. The proposed addition of the phrase “a minimum 25 count sample” establishes a basis for sampling uniformity. U.S. No. 1 would be eliminated from the heading since deleting the color requirements for the U.S. No. 1 grade would eliminate the need for a color tolerance for the grade. However, a qualifying statement would be added for instances in which a color is specified in connection with a grade. The deleting of reference to “basket” is proposed as this type of pack is no longer used by industry. Also deleting the reference to “wrapped fruit” is proposed because typically industry no longer packs fruit in this manner. Industry has requested a definition for “well filled” be added to this paragraph, however we propose adding this definition as a separate paragraph for easier referencing. Additionally, this is consistent with the way in which other definitions are stated in the standards. Adding “or a count-size based on equivalent tray size designations” is proposed to reflect current packaging practices. The deletion of “Four-basket crates” is proposed as this type of pack is no longer used by industry. Industry has requested a definition for well filled be added to paragraph “(a)” of this section. We propose redesignating “(d)” for defining well filled. This is consistent with other definitions in the standard as they are stated separately and it also makes for easier referencing. This deletion is proposed as this type of pack is no longer being used by industry.

Current standard	Proposed	Discussion
(2) The arrangement of the bottom layer shall be one row less one way, and may be one row less each way, than the arrangement of the top layer. The arrangement of the middle layer may be the same as the top layer or may be one row less one way than the arrangement of the top layer. Straight, offset, and diagonal packs in the layers are permitted.	Delete.	This deletion is proposed as this type of pack is no longer being used by industry.
(e) Baskets: Nectarines packed in U.S. standard half-bushel baskets shall be ring faced and tightly packed with sufficient bulge to prevent any appreciable movement of the nectarines within the baskets when lidded.	(e) "Fairly uniform in size" means that when the average diameter of nectarines in any container is 2 inches or smaller not more than 5 percent, by count, of the nectarines in the container shall be outside a diameter range of one-fourth inch; when the average diameter of nectarines in any container is over 2 inches not more than 5 percent, by count, of the nectarines in the container shall be outside a diameter range of three-eighths inch.	This deletion is proposed as this type of pack is no longer being used by industry. Due to this deletion paragraph "(f)" would be redesignated as paragraph "(e)."
(f) "Fairly uniform in size" means that when the average diameter of nectarines in any container is 2 inches or smaller not more than 5 percent, by count, of the nectarines in the container shall be outside a diameter range of one-fourth inch; when the average diameter of nectarines in any container is over 2 inches not more than 5 percent, by count, of the nectarines in the container shall be outside a diameter range of three-eighths inch.	(f) Minimum size: When size is indicated in terms of minimum diameter not more than 5 percent, by count, of the fruit in any container may be smaller than the size marked.	Due to the redesignation of paragraph "(f)" paragraph "(g)" would be redesignated as "(f)."
(g) Minimum size: When size is indicated in terms of minimum diameter not more than 5 percent, by count, of the fruit in any container may be smaller than the size marked.	(g) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.	Due to the redesignation of paragraph "(g)," paragraph "(h)" would be redesignated as "(g)."
(h) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end of the fruits.	(h) Tolerances. In order to allow for variations incident to proper sizing and packing, not more than 10 percent, by count, of the containers in any lot may fail to meet the requirements for standard pack.	Due to the redesignation of paragraph "(h)," paragraph "(i)" would be redesignated as "(h)."
(i) Tolerances. In order to allow for variations incident to proper sizing and packing, not more than 10 percent, by count, of the containers in any lot may fail to meet the requirements for standard pack.		There would be no paragraph "(i)" due to redesignation of preceding paragraphs.
§ 51.3156 Injury. (c) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-eighth inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the aggregate area exceeds that of a circle one-fourth inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size;	(c) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-eighth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle one-fourth inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
(g)(1) Light colored; smooth scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size;	(g)(1) Light colored, smooth scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.
(h)(1) Rough or slightly rough russetting when the area exceeds that of a circle one-eighth inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle one-fourth inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size	(h)(1) Rough or slightly rough russetting when the area exceeds that of a circle one-eighth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-fourth inch in diameter on a fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry.

Current standard	Proposed	Discussion
§ 1.3157 Damage. (c) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size; (f)(1) Dark or rough scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; when the area exceeds that of a circle five-eighths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size; (3) Light colored, smooth scars when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle seven-eighths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size; (g)(1) Rough russetting when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size; (2) Slightly rough russetting when the area exceeds that of a circle five-eighths inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size; (3) Fairly smooth or smooth russetting when the area exceeds 25 percent of the fruit surface of Freedom, Early LeGrand, and Quetta varieties and 15 percent of the fruit surface of other varieties: <i>Provided</i>, That discoloration occurring as yellow to brown staining of the skin shall not be considered as russetting and shall be considered as causing damage only when materially detracting from the appearance of the nectarine, and that speckling characteristic of certain varieties shall not be considered as russetting or discoloration.	(c) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter; (f)(1) Dark or rough scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter; (2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle five-eighths inch in diameter on a fruit larger than 2 inches in diameter; (3) Light colored, smooth scars when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle seven-eighths inch in diameter on a fruit larger than 2 inches in diameter; (g)(1) Rough russetting when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter; (2) Slightly rough russetting when the area exceeds that of a circle five-eighths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter; (3) Fairly smooth or smooth russetting when the area exceeds 15 percent of the fruit surface: <i>Provided</i>, That discoloration occurring as yellow to brown staining of the skin shall not be considered as russetting and shall be considered as causing damage only when materially detracting from the appearance of the nectarine, and that speckling characteristic of certain varieties shall not be considered as russetting or discoloration.	This deletion is proposed as this type of pack is no longer being used by industry. This deletion is proposed as this type of pack is no longer being used by industry. This deletion is proposed as this type of pack is no longer being used by industry. This deletion is proposed as this type of pack is no longer being used by industry. This deletion is proposed as this type of pack is no longer being used by industry. This deletion is proposed as these varieties are no longer of commercial importance.
§ 51.3159 Serious damage. (c) Scab or bacterial spot when the aggregate area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the aggregate area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter or 4x4 size; (g)(1) Dark or rough scars when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or 4x4 size, or smaller; or when the area exceeds that of a circle one inch in diameter on fruit larger than 2 inches in diameter or 4x4 size;	(c) Scab or bacterial spot when the aggregate area exceeds that of a circle one-half inch in diameter or smaller; or when the aggregate area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter; (g)(1) Dark or rough scars when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one inch in diameter on fruit larger than 2 inches in diameter;	This deletion is proposed as this type of pack is no longer being used by industry. This deletion is proposed as this type of pack is no longer being used by industry.

Accordingly, AMS proposes to amend the United States Standards for Grades

of Peaches, the United States Standards for Grades of Fresh Plums and Prunes,

and the United States Standards for Grades of Nectarines.

List of Subjects in 7 CFR Part 51

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

PART 51—[AMENDED]

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

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

Authority: 7 U.S.C. 1622, 1624.

2. In part 51, §§ 51.1210, 51.1211, 51.1212, 51.1213, 51.1214, 51.1216 and 51.1217 are revised to read as follows:

Subpart—United States Standards for Peaches**§ 51.1210 U.S. Fancy.**

“U.S. Fancy” consists of peaches of one variety which are mature but not soft or overripe, well formed and which are free from decay, bacterial spot, cuts which are not healed, growth cracks, hail injury, scab, scale, split pits, worms, worm holes, leaf or limb rub injury; and free from damage caused by bruises, dirt or other foreign material, other disease, insects or mechanical or other means. In addition to the above requirements, each peach shall have not less than one-third of its surface showing blushed, pink or red color.

§ 51.1211 U.S. Extra No. 1.

Any lot of peaches may be designated “U.S. Extra No. 1” when the peaches meet the requirements of U.S. No. 1 grade: *Provided*, That in addition to these requirements, 50 percent, by count, of the peaches in any lot shall have not less than one-fourth of the surface showing blushed, pink or red color.

§ 51.1212 U.S. No. 1.

“U.S. No. 1” consists of peaches of one variety which are mature but not soft or overripe, well formed, and which are free from decay, growth cracks, cuts which are not healed, worms, worm holes, and free from damage caused by bruises, dirt, or other foreign material, bacterial spot, scab, scale, hail injury, leaf or limb rubs, split pits, other disease, insects or mechanical or other means.

§ 51.1213 U.S. No. 2.

“U.S. No. 2” consists of peaches of one variety which are mature but not soft or overripe, not badly misshapen, and which are free from decay, cuts which are not healed, worms, worm holes, and free from serious damage caused by bruises, dirt or other foreign

material, bacterial spot, scab, scale, growth cracks, hail injury, leaf or limb rubs, split pits, other disease, insects, or mechanical or other means.

§ 51.1214 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

(a) U.S. Fancy, U.S. Extra No. 1, and U.S. No. 1 grades. (1) For defects at shipping point.¹ 10 percent of the peaches in any lot may fail to meet the requirements of the specified grade: *Provided*, That included in this amount 5 percent, shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for peaches which are affected by decay.

(2) For defects en route or at destination. 14 percent for peaches in any lot that fail to meet the requirements of the grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) 10 percent for permanent defects;

(ii) 7 percent for defects causing serious damage, included therein not more than 5 percent for serious damage by permanent defects and not more than 2 percent for soft, overripe, or decayed peaches.

(3) For color. (i) U.S. Fancy grade. 10 percent for peaches in any lot which fails to meet the requirements of the grade.

(ii) U.S. Extra No. 1 grade. Individual packages may contain not less than 40 percent of peaches which meet the requirements of the grade: *Provided*, That the entire lot averages not less than 50 percent.

(b) U.S. No. 2 grade. (1) For defects at shipping point. 10 percent of the peaches in any lot may fail to meet the requirements of this grade: *Provided*, That included in this amount not more than 1 percent for peaches which are affected by decay.

(2) For defects en route or at destination. 14 percent for peaches in any lot that fail to meet the requirements of the grade: *Provided*, That included in this amount not more than the following percentages shall be allowed for defects listed:

(i) 10 percent for permanent defects;

¹ Shipping point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

(ii) 2 percent for peaches which are affected by soft, overripe, or decay.

* * * * *

§ 51.1216 Size requirements.

(a) The numerical count or a count-size based on equivalent tray pack size designations or the minimum diameter of the peaches packed in a closed container shall be indicated on the container.

(b) When the numerical count is not shown the minimum diameter shall be plainly stamped, stenciled, or otherwise marked on the container in terms of whole inches, whole and half inches, whole and quarter inches, or whole and eight inches, as 2 inches minimum, 2-¹/₄ inches minimum, 1-⁷/₈ inches minimum, in accordance with the facts. The minimum and maximum diameters may both be stated, as 1-⁷/₈ to 2 inches, or 2 to 2-¹/₄ inches, in accordance with the facts.

(c) *Diameter* means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.

(d) In order to allow for variations incident to proper sizing, not more than 10 percent, by count, of peaches in any lot may be below the specified minimum size and not more than 15 percent may be above any specified maximum size.

§ 51.1217 Standard pack.

(a) Each package shall be packed so that the peaches in the shown face shall be reasonably representative in size, color and quality of the contents of the package.

(b) Peaches packed in U.S. Standard bushel baskets, or half-bushel baskets shall be ring faced and tightly packed with sufficient bulge to prevent any appreciable movement of the peaches within the packages when lidded.

(c) Peaches packed in standard western boxes shall be reasonably uniform in size and arranged in the packages according to the approved and recognized methods. Each wrapped peach shall be fairly well enclosed by its individual wrapper. All packages shall be well filled and tightly packed but the contents shall not show excessive or unnecessary bruising because of overfilled packages. The number of peaches in the box shall not vary more than 4 from the number indicated on the box.

(d) Peaches packed in other type boxes such as wire-bound boxes and fiber-board boxes may be place packed, or jumble packed faced, and all packs shall be well filled.

(e) Peaches packed in boxes equipped with cell compartments or molded trays

shall be of the proper size for the cells or the molds which they are packed.

(f) Peaches placed in individual paper cups and packed in boxes shall be in cups of the proper size for the peaches.

(g) Peaches packed in loose or volume filled boxes shall be uniform in size and well filled.

(h) In order to allow for variations incident to proper packing, not more than 10 percent of the packages in any lot may not meet these requirements.

(i) *Well filled* means that the peaches are packed within 1 inch from the top of the container.

§ 51.1524 [Removed and reserved]

3. Section 51.1524 is removed and reserved.

4. Section 51.1525 is amended by revising the introductory text.

Subpart—United States Standards for Grades of Fresh Plums and Prunes

§ 51.1525 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on a minimum 25 count sample, are provided as specified:

* * * * *

5. Section 51.1527 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 51.1527 Standard pack.

(a) *Packing*. (1) All packages shall be tightly packed or well filled, according to the approved and recognized methods.

(2) The plums or prunes in the top layer of any package shall be reasonably representative in quality and size of those in the remainder of the package.

(3) *Well filled* means that the plums or prunes are packed within 1 inch from the top of the container.

(4) *Tightly packed* means the plums or prunes are the proper size for the mold or cell compartments in which they are packed, and the molds or cells are filled in such a way that movement is not allowed.

(b) *Marking*. (1) The size of plums or prunes shall be marked on each package, and shall be indicated in terms of minimum diameter, or number of fruit per package, or in accordance with the arrangement of the top layer of fruit in the package or subcontainer. Size may also be shown in terms of maximum number of fruit for a specified weight, such as “8 per pound,” “6.4 per pound” or “7–²/₃ per pound” or by a count-size designation based on the number of fruits contained in a 10 pound sample with the designation rounded to an applicable number which is divisible by 5

(example: 40 size, 45 size, 50, size, 55 size, etc.).

(i) *California peach boxes, lug boxes and small consumer packages*. In layer-packed California peach boxes or lug boxes, and in small layer packed consumer packages, the count of the entire contents shall be marked on the package. The number of plums or prunes in California peach boxes or lug boxes shall not vary more than 4 from the number indicated on the package. Loose filled consumer packs not in a master container shall have a count-size marked on the package or on a tag closure. Master containers of loose filled consumer packages shall have a count-size marked on the package describing the size of plums or prunes within the container.

(ii) *Face and fill packs in cartons and lug boxes*. In face and fill packs in cartons and lug boxes the number of rows in the face shall be marked on the packages, as “6 row,” “8 row,” etc.

(c) *Sizing*. (1) Not more than 5 percent, by count, of the plums or prunes in any package may vary more than one-fourth inch in diameter, except that not more than 5 percent, by count, of the plums or prunes 2–¹/₄ inches or larger in diameter and packed in loose or volume filled containers may vary more than three-eighths inch in diameter.

* * * * *

6. Section 51.1532 is amended by adding paragraphs (c)(6) and (j) and revising paragraphs (e), (h)(1), (h)(2), (h)(3), (i)(1), (i)(2) and (i)(3) to read as follows:

§ 51.1532 Damage.

* * * * *

(c) * * *

(6) When extending from within to outside the stem cavity, when more than three-eighths inch in length if the major portion of the crack is within the stem cavity or when more than one-fourth inch in length if the major portion of the crack is outside the stem cavity;

* * * * *

(e) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(h) * * *

(1) Dark or rough scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter;

(2) Fairly light colored, fairly smooth scars when, in the case of Italian type prunes, the area exceeds that of a circle one-half inch in diameter; or when, in the case of other types of plums, the area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle five-eighths inch in diameter on a fruit larger than 2 inches in diameter;

(3) Light colored, smooth scars when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums, the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle seven-eighths inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(i) * * *

(1) Rough russetting when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter;

(2) Slightly rough russetting when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums, the area exceeds that of a circle five-eighths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter;

(3) Fairly smooth or smooth russetting when, in the case of Italian type prunes, the area exceeds one-twelfth of the fruit surface; or when, in the case of other types of plums the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle 1 inch in diameter on a fruit larger than 2 inches in diameter.

(j) Discoloration when greenish to brown definitely contrasting with the normal surface color of the fruit and affecting more than 10 percent of the surface.

7. Section 51.1536 is amended by adding paragraph (c)(5), revising paragraphs (e) and (h)(1) and adding paragraph (l) to read as follows:

§ 51.1536 Serious damage.

* * * * *

(c) * * *

(5) When extending from within to outside the stem cavity, when healed and aggregating more than five-eighths inch in length if the major portion of the crack is within the stem cavity or when

healed and aggregating more than one-half inch in length if the major portion of the crack is outside the cavity;

* * * * *

(e) Scab or bacterial spot, when the aggregate area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(h) * * *

(1) Dark or rough scars or rough russetting when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(l) Discoloration when greenish to brown definitely contrasting with the normal surface color of the fruit and affecting more than 25 percent of the surface.

8. Section 51.3145 is amended by revising paragraph (a) to read as follows:

Subpart—United States Standards for Grades of Nectarines

§ 51.3145 U.S. Fancy.

* * * * *

(a) Each nectarine shall have not less than one-third of its surface showing red color characteristic of the variety. (See § 51.3150.)

9. Section 51.3146 is amended by revising paragraph (a) to read as follows:

§ 51.3146 U.S. Extra No. 1.

* * * * *

(a) At least 75 percent of the nectarines in any lot shall show some blushed or red color including therein at least 50 percent of the nectarines with not less than one-third of the fruit surface showing red color characteristic of the variety. (See § 51.3150.)

§ 51.3147 [Amended]

10. Section 51.3147 is amended by removing paragraph (a).

§ 51.3148 [Amended]

11. Section 51.3148 is amended by removing paragraph (a).

§ 51.3149 [Removed and reserved]

12. Section 51.3149 is removed and reserved.

13. Section 51.3150 is amended by revising the introductory text and paragraph (a)(3)(ii) to read as follows:

§ 51.3150 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, based on

a minimum 25 count sample, are provided as specified:

* * * * *

(a) * * *

(3) * * *

(ii) U.S. Extra No. 1 grade and when specified in connection with a grade. Individual containers may contain not more than 10 percentage points less than the required percentage of nectarines showing the amount of color specified for the grade: *Provided*, That the entire lot averages not less than the required percentage of nectarines showing the specified color for the grade.

* * * * *

14. Section 51.3152 is revised to read as follows:

§ 51.3152 Standard pack.

(a) Nectarines shall be fairly uniform in size and shall be packed in boxes, lugs, crates, or cartons and arranged according to the approved and recognized methods. All such containers shall be tightly packed and well filled but the contents shall not show excessive or unnecessary bruising resulting from overfilling. The nectarines in the shown face shall be reasonably representative in size, color and quality of the contents of the container.

(b) When packed in closed containers, the size shall be indicated by marking the container with the numerical count, the pack arrangement, or the minimum diameter or minimum and maximum diameters in terms of inches and not less than one-eighth fractions of inches, or a count-size based on equivalent tray pack size designations.

(c) Boxes, lugs or cartons: (1) Nectarines packed in containers equipped with cell compartments, cardboard fillers or molded trays shall be of the proper size for the cells, fillers, or molds in which they are packed, and the number of nectarines in the container shall correspond to the count marked on the container.

(2) In order to allow for variations incident to proper packing, when packed in other types of packs in lugs, cartons, or boxes, the number of nectarines in the container may vary not more than two from the number marked on the container.

(d) *Well filled* means that the nectarines are packed within 1 inch from the top of the container.

(e) *Fairly uniform in size* means that when the average diameter of nectarines in any container is 2 inches or smaller not more than 5 percent, by count, of the nectarines in the container shall be outside a diameter range of one-fourth inch; when the average diameter of nectarines in any container is over 2 inches not more than 5 percent, by

count, of the nectarines in the container shall be outside a diameter range of three-eighths inch.

(f) *Minimum size*: When size is indicated in terms of minimum diameter not more than 5 percent, by count, of the fruit in any container may be smaller than the size marked.

(g) *Diameter* means the greatest dimension measured at right angles to a line from stem to blossom end of the fruit.

(h) *Tolerances*. In order to allow for variations incident to proper sizing and packing, not more than 10 percent, by count, of the containers in any lot may fail to meet the requirements for standard pack.

15. Section 51.3156 is amended by revising paragraphs (c), (g)(1), and (h)(1) to read as follows:

§ 51.3156 Injury.

* * * * *

(c) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-eighth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle one-fourth inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(g) * * *

(1) Light colored, smooth scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(h) * * *

(1) Rough or slightly rough russetting when the area exceeds that of a circle one-eighth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-fourth inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

16. Section 51.3157 is amended by revising paragraphs (c), (f), and (g) to read as follows:

§ 51.3157 Damage.

* * * * *

(c) Scab or bacterial spot when cracked, or when the aggregate area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(f) Scars, including those caused by hail, when the surface of the fruit is depressed more than one-sixteenth inch, or when exceeding any of the following aggregate areas, or a combination of two

or more types of scars the seriousness of which exceeds the maximum allowed for any one type:

(1) Dark or rough scars when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-eighths inch in diameter on a fruit larger than 2 inches in diameter;

(2) Fairly light colored, fairly smooth scars when the area exceeds that of a circle one-half inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle five-eighths inch in diameter on a fruit larger than 2 inches in diameter;

(3) Light colored, smooth scars when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle seven-eighths inch in diameter on a fruit larger than 2 inches in diameter;

(4) Twig or limb scratches which are not well healed or which have an aggregate length of more than one-half inch; and

(g) Russetting which exceeds any of the following aggregate areas of any one type of russetting, or a combination of two or more types of russetting the seriousness of which exceeds the maximum allowed for any one type:

(1) Rough russetting when the area exceeds that of a circle one-fourth inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one-half inch in diameter on a fruit larger than 2 inches in diameter;

(2) Slightly rough russetting when the area exceeds that of a circle five-eighths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter;

(3) Fairly smooth or smooth russetting when the area exceeds 15 percent of the fruit surface: *Provided*, That discoloration occurring as yellow to brown staining of the skin shall not be considered as russetting and shall be considered as causing damage only when materially detracting from the appearance of the nectarine, and that speckling characteristic of certain varieties shall not be considered as russetting or discoloration.

17. Section 51.3159 is amended by revising paragraphs (c) and (g)(1) to read as follows:

§ 51.3159 Serious damage.

* * * * *

(c) Scab or bacterial spot when the aggregate area exceeds that of a circle one-half inch in diameter on a fruit 2

inches in diameter or smaller; or when the aggregate area exceeds that of a circle three-fourths inch in diameter on a fruit larger than 2 inches in diameter;

* * * * *

(g) * * *

(1) Dark or rough scars when the area exceeds that of a circle three-fourths inch in diameter on a fruit 2 inches in diameter or smaller; or when the area exceeds that of a circle one inch in diameter on fruit larger than 2 inches in diameter;

* * * * *

Dated: September 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-24349 Filed 9-24-02; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend its rule that permits a Federal credit union to provide reasonable retirement benefits to its employees and officers. These amendments clarify the scope of the rule and the investments federal credit unions may use to fund employee benefits. This proposal is substantially similar to an earlier proposal issued in December 2001, but, as a result of comments received in response to the earlier proposal, addresses additional investment issues related to particular benefit plans.

DATES: Comments must be received on or before November 25, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You are encouraged to fax comments to (703) 518-6319 or email comments to regcomments@ncua.gov instead of mailing or hand-delivering them. Whatever method you choose, please send comments by one method only.

FOR FURTHER INFORMATION CONTACT:

Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

In December 2001, NCUA issued a proposed rule with request for comments to clarify that the scope of § 701.19(a), which currently states that a federal credit union (FCU) may provide reasonable retirement benefits for its employees and officers, is not limited only to retirement benefits, but is more broadly applicable to other employee benefit plans. 66 FR 65662 (December 20, 2001). NCUA received fifteen comments: seven from credit union trade associations and eight from federal credit unions. All of the comments were generally supportive of the proposal.

Having considered those comments, the Board has determined that it will issue this second proposed rule to address certain issues raised in the comments, including the need to distinguish defined contribution plans from various kinds of defined benefit plans. This revised proposal is, however, substantially similar to the first proposal issued in December 2001 and contains much of the same background information from the first proposal.

As competition to attract and retain highly qualified employees has increased and the employee benefit marketplace has become more sophisticated, FCUs are increasingly providing more diverse and less traditional forms of employee benefits including, for example, deferred compensation plans and stock option plans. As a result, FCUs need flexibility to use safe, reasonable and efficient methods to fund their employee benefit obligations. In addition to providing this flexibility, this proposed rule updates the regulatory language to reflect current employee benefits terminology including renaming the rule "Benefits for Employees of Federal Credit Unions."

An FCU investing on its own behalf is subject to the investment provisions of the Federal Credit Union Act (Act) and NCUA regulations. 12 U.S.C. 1757(7), (8), (15); 12 CFR part 703. In legal opinion letters, the NCUA's Office of General Counsel has stated that these investment provisions do not apply when an FCU is acting under its authority to provide and fund retirement or other employee benefits. 12 U.S.C. 1761b(12); 12 CFR § 701.19. NCUA's long-standing legal interpretation is that an FCU may purchase an otherwise impermissible investment to fund an employee benefit obligation as long as there is a direct connection between the investment and the employee benefit obligation it serves to fund. In that context, NCUA has also