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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Docket Number FV-95-302]

#### Peaches; Grade Standards

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the United States Standards for Grades of Peaches by changing the method in which peaches are sized. The revision will bring the standards into conformity with current cultural, harvesting and marketing practices by revising the definition of "diameter" from the shortest distance to the greatest distance. The Agricultural Marketing Service (AMS), in cooperation with industry, and other interested parties develops and improves standards of quality, condition, quantity, grade, and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

**EFFECTIVE DATE:** October 2, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456, (202) 720-2185.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action

will not have a significant economic impact on a substantial number of small entities. The revision of U.S. Standards for Grades of Peaches will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final 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.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The proposed rule, United States Standards for Grades of Peaches, was published in the **Federal Register** on March 3, 1995, (60 FR 11918).

The National Peach Council (NPC), with the support of the Georgia Peach Council, New Jersey Peach Promotion Council, Inc., and the South Carolina Peach Council and Promotion Board, Inc., requested that the USDA revise the United States Standards for Grades of Peaches, which were last revised in 1952. The NPC requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices. The NPC contends that due to new improved varieties, that changes to the current standards are necessary. Currently, peaches are sized based on the shortest diameter, which requires the use of a caliper or slotted sizing ring. This method was adopted several years ago when most peaches were oblong and heavily sutured. Industry research has demonstrated that today's varieties are generally much more round and more uniform in shape than older varieties. The shape of peaches is similar to nectarines. Nectarines are sized by using the greatest diameter of the nectarine, which allows fruit to be

sized using a sizing ring. Therefore, in order to create uniformity in the marketplace, peaches should be sized on the same basis as nectarines, by using the greatest dimension measured at right angles to a line from stem to blossom end of the fruit, using a sizing ring.

The 60-day comment period on the proposed rule ended May 2, 1995, and a total of twenty-six comments were received from growers, shippers, and receivers. All comments were in favor of the proposal in its entirety, although concerns were raised. In addition, one comment was received from the Agricultural Research Service (ARS).

A copy of the proposed rule was provided to the ARS for helping identifying studies, data collection or other information relevant to the possible effect of the proposed revision on pesticide use. ARS reported that they were unable to find much information on the subject. The information that was found by ARS proved not to be relevant.

Twenty-six comments were in favor of revising the United States Standards for Grades of Peaches by changing the method in which peaches are sized from shortest diameter using a caliper or slotted sizing ring to the greatest diameter using a sizing ring. It is believed that this revision will create uniformity within the marketplace.

One comment from a receivers association went on to state that they were concerned that the proposed change would allow shippers to market smaller peaches than those that are marketed under the current method of sizing peaches. They did not believe that shipment of smaller peaches would be beneficial to the receivers, wholesalers, retailers or consumers. Another comment from a State association stated that "it is estimated that fruit sized with a ring will yield approximately four fruit per pound while fruit labeled the same size but measured with a caliper will yield only three fruit per pound." Although this change in sizing method may yield slightly more fruit per pound, this change is insignificant when considering the ease of determining size by the new method.

Sizing machinery used by packers/shippers has never measured peaches based on a slotted sizing method. Most automated sizing methods have generally been based on a ring sizing

method. As a result, peach industry packers/shippers had to estimate the size of the final pack. Ultimately, this meant using trial and error methods to yield properly sized fruit. This change should result in a more uniform and accurately sized pack, and at the same time alleviate the unnecessary time spent by these individuals by eliminating this trial and error method.

The revision will affect peaches that are sized to a minimum diameter, which are mostly grown on the east coast and some in the Midwest. This will not affect peaches grown on the west coast as they are sized based on 7 CFR part 917, consisting of a weight-count system.

AMS develops and improves standards of quality, condition, grade, and packaging in order to facilitate efficient marketing. The provisions of this final rule are the same as those in the proposed rule.

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

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

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

**PART 51—[AMENDED]**

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, § 51.1216(c) is revised to read as follows:

**Subpart—United States Standards for Grades of Peaches**

**§ 51.1216 Size requirements.**

\* \* \* \* \*

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

\* \* \* \* \*

Dated: July 24, 1995.

**Lon Hatamiya,**  
*Administrator.*

[FR Doc. 95-18904 Filed 8-1-95; 8:45 am]

BILLING CODE 3410-02-P

**Grain Inspection, Packers and Stockyards Administration**

**7 CFR Part 800**

**Official/Unofficial Weighing Service**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** In compliance with the requirements for periodic review of existing regulations and the President's Regulatory Review Initiative, the Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending portions of Part 800, General Regulations under the United States Grain Standards Act, as amended (USGSA) to allow official agencies to provide both official and unofficial weighing within their assigned area of responsibility but not at the same facility. This action will make official Class X and Class Y weighing services more readily available at a lower cost to the grain industry at nonexport locations.

**DATES:** This rule will be effective on October 2, 1995. Unless we receive written adverse comments or written notice of intent to submit adverse comments on or before September 1, 1995.

**ADDRESSES:** Please send any adverse comments or notice of intent to submit adverse comments to George Wollman, GIPSA-FGIS, USDA, Room 0623-S, P.O. Box 96454, Washington, D.C. 20090-6454; FAX (202) 720-4628. All comments received will be made available for public inspection at the above address during business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:**

George Wollman, address as above, telephone (202) 720-0292.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

**Executive Order 12778**

This amended rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

**Regulatory Flexibility Act Certification**

James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons that perform those services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Further, the standards are applied equally to all entities.

**Information Collection and Record Keeping Requirement**

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and Record keeping requirements in Part 800 have been approved previously by OMB and assigned OMB No. 0580-0013.

**Background**

Enactment of the United States Grain Standards Act of 1976, as amended, required FGIS to establish a national weighting program for gain. Regulations under the USGSA prohibit designated agencies or official personnel from providing official services if they provide similar unofficial services. Designated agencies are agencies granted authority under the USGSA to provide either official inspection service, or Class X or Class Y weighing services or both, at locations other than export port locations. A large portion (88%) of the designated agencies are designated for inspection services only. The reason is that before 1976 most grain inspection agencies were already providing weighing as an accessory service to grain inspection. The agencies were affiliated with and supervised by the then existing weighing and inspection bureaus under the direction of the Association of American railroads, local grain exchanges, boards of trade, and various State programs. After the FGIS weighting programs started, the weighing being performed by the grain inspection agencies became unofficial weighing. Most agencies continued their unofficial weighing and applied for inspection designations only.

Since 1976 many inspection and weighing bureaus, boards of trade, and the Association of American Railroads have ceased providing supervision of this unofficial service. Because of the decreasing availability of supervision caused by the lack of supervising entities, the need for more access to Class X or Class Y weighing exists. If allowed to provide both types of service,