

# 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

[Docket # AMS-FV-07-0140]

#### United States Standards for Grades of Table Grapes (European or Vinifera Type)

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the United States Standards for Grades of Table Grapes (European or Vinifera Type). These standards are issued under the Agricultural Marketing Act of 1946. The changes being proposed are based on the request of the California Grape and Tree Fruit League (CGTFL) to revise the tolerances to include an allowance for shattered berries due to the change of pack style from mostly plain pack to consumer size units. The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA), is proposing a revision to the voluntary standards to add a 5 percent allowance for shattered berries in consumer containers for shipment that are en route or at destination. The standards provide industry with a common language and a uniform basis for trading, thus promoting the orderly and efficient marketing of European or Vinifera Type table grapes.

**DATES:** Comments must be received by March 27, 2008.

**ADDRESSES:** Interested persons are invited to submit written comments on the internet at: <http://www.regulations.gov> or to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250-0240; Fax (202)720-8871. Comments should make reference to the

dates 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:

Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720-2185. The United States Standards for Grades of Table Grapes (European or Vinifera Type) are available by accessing the Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfrfv.htm>.

**SUPPLEMENTARY INFORMATION:** Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as amended, directs and authorizes the Secretary of Agriculture (To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.) AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

#### 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 and Paperwork Reduction Act

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. Comments also are specifically requested on the number and size of producers and handlers of table grapes in the United States.

This rule will revise the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) that were issued under the Agricultural Marketing Act of 1946. Standards issued under the 1946 Act are voluntary.

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 \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. According to the National Agricultural Statistics Service (NASS) report of the 2002 Census of Agriculture, there are 23,856 grape farms in the United States. Using additional data from the Noncitrus Fruits and Nuts 2005 Summary, total fresh utilization of grapes was 995,370 tons. Furthermore, the price per ton for grapes in 2005 was \$570.00 and the value of grapes utilized as fresh products was \$567,523,000. Based on the number of farms (23,856), the average producer revenue from the sale of fresh grapes is estimated at approximately \$23,789 per year. Therefore, the majority of fresh grape producers may be classified as small entities.

The number of table grape handlers in the United States is not known. There are approximately twenty handlers regulated under the Marketing Order 925 (7 CFR part 925). Last year, fourteen of the twenty handlers subject to regulation had annual grape sales of less than \$6,500,000. Accordingly, we estimate that the majority of Table grape handlers in the United States are small entities. We welcome information that the public may offer as to the number and size of handlers in the United States.

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

The use of grading services and grading standards is voluntary unless required by a specific Act, Federal Marketing Order or Agreement, or other regulations governing domestic, import or export shipments.

USDA has not identified any Federal rules that duplicate, overlap, or conflict

with this rule. Although there is a marketing order program which regulates the handling of European or Vinifera type table grapes under the order, the revision being proposed in this action only affects shattered berries in consumer size containers en route or at destination. As such, the proposed action would not effect table grapes under Marketing Order or under Section 8e of the Agricultural Marketing Agreement Act of 1937.

After considering the request of the CGTFL, AMS is proposing to revise the standard by adding a 5 percent allowance for shattered berries in shipments that are en route or at destination. This revision will make the standards more consistent and uniform with marketing trends and commodity characteristics. This proposed action will not impose any additional reporting or record keeping requirements on either small or large grape producers or handlers.

#### Background

In November of 2005, AMS received two petitions requesting a revision to the United States Standards for Grades of Table Grapes (European or Vinifera Type). These petitions were received from the CGTFL on November 9, 2005 and Western Growers on November 23, 2005. These two trade associations represent more than 85 percent of the European or Vinifera type table grape production in the United States. They requested an additional 10 percent allowance for shattered berries en route or at destination for grapes in consumer containers. The petitioners stated that they feel change, specific to consumer containers, is warranted as the majority of table grapes are now being sold in consumer containers which allows shattered berries to be fully utilized/sold.

On January 24, 2006, AMS published in the **Federal Register** (71 FR 3818) an Advanced Notice of Proposed Rulemaking (ANPR) soliciting comments on the proposed revision to the United States Standards for Grades of Table Grapes (European or Vinifera Type), which included a 10 percent allowance for shattered berries en route or at destination only in consumer units; the comment period ended on March 27, 2006. AMS received fourteen comments in response to this notice.

Twelve comments supported the proposal; one from a regional agriculture trade association, one from a table grape association, and ten from members of the table grape association. Each of these comments indicated that new improvements to consumer packaging resulted in less shrinkage and

a more sellable product to consumers, and with this improvement, a revision of how shatter is scored was needed.

One comment opposing the proposal was received from a national trade association representing wholesale produce receivers. The receivers' association stated that an additional allowance for shattered berries would be unfairly damaging to receivers and consumers.

Finally, one comment was received from a trade association of shippers of table grapes from the State of Sonora, Mexico. The shippers' association supported the idea of revisiting the standards for table grapes, however, it wanted to investigate the potential effects of an added ten percent allowance during the upcoming season before supporting this revision. The association indicated that the 10 percent allowance seemed high.

As a result of the comments received from the ANPR, AMS published in the **Federal Register** (71 FR 55367) a proposed rule on September 22, 2006. Taking into account the comments received, AMS believed that it would be more beneficial to the overall industry to fully utilize shattered berries that are not otherwise defective, in consumer containers. The majority of table grapes are now sold in consumer containers. A 60-day comment period was allowed for interested parties to comment on the proposed revision. The comment period ended on November 21, 2006.

In response to the proposed rule, AMS received fourteen comments. Twelve comments supported the proposal. Two comments were from regional agricultural trade associations; one comment was from a national table grape association; and nine comments were from members of an agricultural trade association representing growers, packers, shippers and exporters of table grapes. These comments were almost identical to the majority of comments received from the ANPR regarding current packaging and marketing procedures. The comments indicated that because of changes in packaging and marketing practices, a revision of how shatter is scored was warranted.

Two comments opposed the proposal. One comment was received from a national trade association representing wholesale produce receivers, and one from a grower and shipper of table grapes. The receivers' association stated that they saw no reason to provide a special allowance for shattered berries in consumer containers. The comment stated that the proposed allowance would enable more lower-quality product to qualify for the U.S. No. 1 grade. The comment also argued that the

proposal actually allows 22 percent shatter at destination. The commentor also noted that the percentage would be higher if the Perishable Agricultural Commodities Act (PACA) Good Delivery tolerances were taken into account. PACA tolerances may be taken into account when AMS resolves contract disputes under the PACA.

The comment received from the grower and shipper of table grapes opposing the revision stated that it was not appropriate to change the current grade standards and thereby downgrade the industry's and consumers' perception of table grapes in general. The comment also proposed a new grade, "U.S. No. 1 High Shatter" as an alternative. However, the original proposal was for an additional allowance for en route or destination inspections only. Developing a new grade would have resulted in that grade needing to be applied at shipping point in order for it to be applied en route or at destination. Therefore, developing an additional grade was and is not being considered at this time.

One request for a reopening of the comment period was received from a receiver/wholesaler after the comment period ended. At that time, AMS believed that reopening the comment period would not facilitate resolution and would only prolong the then current state of uncertainty, with regard to whether a 10 percent allowance for shattered berries would be allowed.

However, due to the lack of industry consensus concerning the proposed rule, AMS published in the **Federal Register** (72 FR 35668) a notice to withdraw the proposed rule on June 29, 2007. AMS subsequently met with CGTFL and several of its members. CGTFL stated its continued interest in an additional allowance of 10 percent for shattered berries en route or at destination for grapes in consumer containers because the majority of table grapes are now sold in these, which allows shattered berries to be utilized.

AMS also met with the North American Perishable Agricultural Receivers (NAPAR), several of its members and other wholesale produce receivers. Generally, the receivers stated their opposition to an additional allowance for shattered berries based on their belief that such an allowance would be detrimental to the grape industry and consumers.

On October 5, 2007, AMS received a second petition from the CGTFL requesting a revision to the United States Standards for Grades of Table Grapes (European or Vinifera Type). Its petition revision repeated the original request for an additional 10 percent

allowance for shattered grapes en route or at destination for grapes in consumer containers.

The requested change of the petitioners for a 10 percent allowance for shattered berries in addition to the 12% tolerance for total defects could potentially allow for 22 percent defects in a lot and still grade U.S. No. 1 Table. We believe that such a possible percentage is too high and would not appropriately reflect what is expected by industry and consumers in a U.S. No. 1 Table grade. Accordingly, AMS is not proposing this requested 10 percent allowance because AMS believes it would weaken the standard and reduce consumer confidence in the grade. However, AMS recognizes that a change in packaging and marketing has occurred in the Table Grape (European or Vinifera Type) industry. Additionally, AMS believes that due to improvements in packaging, marketing, and shipping that a revision to the current U.S. Standards would be beneficial to both the industry and consumers.

Therefore, AMS is proposing a 5 percent allowance for shattered grapes be added to the United States Standards for Grades of Table Grapes (European or Vinifera Type). The proposed allowance is specific to table grapes en route or at destination in consumer sized packages.

The standards currently provide in section 51.886, Table II Tolerances En Route or at Destination, a 12 percent total tolerance for bunches and berries failing to meet the requirements of grade for en route or at destination. Revising section 51.886, Table II, by adding a 5 percent allowance for shattered berries would mean that shattered berries would not be scored as a defect against the 12 percent total tolerance until the amount of shattered berries exceeds the 5 percent allowance. For example, if a lot has 17 percent shattered berries, 12 percent would be reported as a defect and the lot would meet the requirements of the U.S. No. 1 Table grade provided no other defects were present; however, if a lot of berries has 18 percent shattered berries 13 percent would be reported as a defect, which would cause the lot to fail to meet the requirements of the U.S. No. 1 Table grade by one percentage point.

To enable utilization of this revision in the 2008 season, this action provides a 30-day comment period for interested parties to comment on the proposed revision. Also, AMS is particularly interested in comments and factual data that would demonstrate that this proposed revision would either positively or negatively impact financially interested parties. Specifically, data that shows expected

financial losses due to adjustments made by shippers or conversely, expected additional expenses that would be incurred by receivers due to shattered berries in amounts of five percent or greater.

Accordingly, AMS proposes to amend the United States Standards for Grades of Table Grapes (European or Vinifera Type) as follows:

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

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

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

#### PART 51—[AMENDED]

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

**Authority:** 7 U.S.C. 1621—1627.

2. In (51.886, paragraph (b), Table II is revised to read as follows:

#### Subpart—United States Standards for Grades of Table Grapes (European or Vinifera Type)

##### § 51.886 Tolerances.

\* \* \* \* \*

(A) For bunches failing to meet color requirements .....	10	10	10
(B) For bunches failing to meet requirements for minimum diameter of berries .....	10	10	10
(C) For bunches failing to meet stem color requirements .....	10	.....	.....
(D) For offsize bunches and for bunches and berries failing to meet the remaining requirements for the grade .....	12	12	12
(a) For shattered berries in consumer size packages an allowance of 5 percent is provided. Any percent of shattered berries exceeding the allowance of 5 percent shall be scored as berries failing to meet the requirements of the grade.			
Including in (D):			
(b) For permanent defects .....	8	8	8
(c) For serious damage .....	4	4	4
And, including in (c):			
(i) For serious damage by permanent defects .....	2	2	2
(ii) For decay .....	1	1	1

\* \* \* \* \*

Dated: February 19, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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#### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Parts 60, 63, 73, and 74

RIN 3150-AI06

#### Geologic Repository Operations Area Security and Material Control and Accounting Requirements; Extension of Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule: Extension of comment period.

**SUMMARY:** On December 20, 2007 (72 FR 72522), the Nuclear Regulatory

Commission (NRC) published for public comment a proposed rule on Geologic Repository Operations Area Security and Material Control and Accounting Requirements. The public comment period for this proposed rule was to have expired on March 4, 2008. The Nuclear Energy Institute (NEI) has requested an extension to May 5, 2008. Due to the complex nature of the proposed rule, the NRC has decided to extend the comment period until May 5, 2008. In a letter dated January 22, 2008, NEI requested the additional time to fully capture the relevant industry experience with the type of post September 11, 2001 security