

TABLE I.—INTERNAL DEFECTS—Continued

Defects	Damage maximum allowed	Serious damage maximum allowed
Internal Black Spot .....	When the spot(s) are darker than the official color chip (POT-CC-2) after removing 5 percent of the total weight of the potato.	When the spot(s) are darker than the official color chip (POT-CC-2) after removing 10 percent of the total weight of the potato.
Occurring entirely within the vascular ring		
Hollow Heart or Hollow Heart with Discoloration.	Area affected not to exceed that of a circle 1/2 inch in diameter in a potato 2 1/2 inches in diameter or 6 ounces in weight. <sup>1</sup>	Area affected not to exceed that of a circle 3/4 inch in diameter in a potato 2 1/2 inches in diameter or 6 ounces in weight. <sup>1</sup>
Light Brown Discoloration (Brown Center).	Area affected not to exceed that of a circle 1/2 inch in diameter in a potato 2 1/2 inches in diameter or 6 ounces in weight. <sup>1</sup>	Area affected not to exceed that of a circle 3/4 inch in diameter in a potato 2 1/2 inches in diameter or 6 ounces in weight. <sup>1</sup>
Internal Brown Spot and Similar Discoloration (Heat Necrosis).	Not more than the equivalent of 3 scattered spots 1/8 inch in diameter in a potato 2 1/2 inches in diameter or 6 ounces in weight. <sup>1</sup>	Not more than the equivalent of 6 scattered spots 1/8 inch in diameter in a potato 2 1/2 inches in diameter or 6 ounces in weight. <sup>1</sup>

<sup>1</sup> Note: Correspondingly lesser or greater areas in smaller or larger potatoes.

Dated: September 14, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Docket Number FV-06-304]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA), is proposing a revision to the voluntary United States Standards for Grades of Table Grapes (European or Vinifera Type). Two industry associations requested the standards be modified by adding a 10 percent allowance for shattered grapes 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 November 21, 2006.

**ADDRESSES:** Interested persons are invited to submit written comments 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; e-mail [FPB.DocketClerk@usda.gov](mailto:FPB.DocketClerk@usda.gov). 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. The United States Standards for Grades of Table Grapes (European or Vinifera Type) are available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: <http://www.ams.usda.gov/fv/fpbcheck.htm>.

**FOR FURTHER INFORMATION CONTACT:** Cheri L. Emery, at the above address, telephone number (202) 720-2185, or e-mail address [Cheri.Emery@usda.gov](mailto:Cheri.Emery@usda.gov).  
**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 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.

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 grape utilized as fresh 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.

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. The number of table grape handlers in the United States is not known. However, we estimate that the majority of such handlers may be classified as small entities, reflecting the size of a majority of handlers regulated under the marketing order 7 CFR part 925. The majority of handlers regulated under the marketing order is approximately twenty. Thus, the majority of fresh grape producers and handlers, may be classified as small entities.

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. There is a marketing order program which regulates the handling of European or Vinifera type table grapes under 7 CFR part 925. Further, Section 8e of the Agricultural Marketing Agreement Act of 1937 requires, whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain specified commodities, the same or comparable regulations on imports of those commodities be issued. 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 affect table grapes under the marketing order or under Section 8e of the Agricultural Marketing Agreement Act of 1937.

This proposed change would modify the standard by adding a 10 percent allowance for shattered grapes in shipments that are en route or at destination and will make the standards more consistent and uniform with marketing trends and commodity characteristics. This proposed action will not impose any additional reporting or recordkeeping requirements on either small or large grape producers, handlers, or importers.

Alternatives were considered for this action. One alternative would be to not

issue a proposed rule. However, the need for revisions have increased as a result of changing marketing characteristics by industry, and the proposal is the result of a request by industry. Further, the purpose of these standards is to facilitate the marketing of agricultural commodities.

#### Background

AMS received petitions from the California Grape and Tree Fruit League and Western Growers Association, requesting a revision to the United States Standards for Grades of Table Grapes (European or Vinifera Type) to add an additional 10 percent allowance for shattered grapes in consumer containers for shipments that are en route or at destination. 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 10 percent allowance for shattered 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 10 percent allowance. For example, if a lot of berries has 22 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 23 percent shattered berries, 13 percent would be reported as a defect, which would cause the lot to fail meet the requirements of the U.S. No. 1 Table 1 grade by 1 percent. 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 allow shattered berries to be fully utilized/sold.

Prior to undertaking detailed work to develop a proposed revision to the standards, AMS published a notice on January 24, 2006, in the **Federal Register** (71 FR 3818) soliciting comments on the proposed revision. In response to the notice, AMS received fourteen comments from the table grape industry. The comments are available by accessing the AMS, Fresh Products Branch Web site at: <http://www.ams.usda.gov/fv/fpbdoctlist.htm>.

Twelve comments supported the proposal; one from a regional agriculture trade association, one from a table grape association and ten from members of that 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 increase of shattered grapes 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. Additionally, the association expressed a need to reexamine the definitions of "bunch size" and "straggly bunch" as it does not believe the requirements under each definition accurately represent the current market demands for table grapes. These additional matters are beyond the scope of the proposed revision, and therefore they will not be addressed in this action.

Taking into account the comments received, AMS believes 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. Further, this action provides for a 60-day comment period for interested parties to comment on the proposed revision.

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 recordkeeping requirements, Trees, Vegetables.

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

#### PART 51—[AMENDED]

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

**Authority:** 7 U.S.C. 1621—1627.

2. In § 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)**

(b) \* \* \*

**§ 51.886 Tolerances.**

\* \* \* \* \*

TABLE II.—TOLERANCES EN ROUTE OR AT DESTINATION

Factor	U.S. extra fancy table	U.S. fancy table	U.S. No. 1 table
(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
(E) For shattered berries in consumer size packages an allowance of 10 percent is provided. Any percent of shattered berries exceeding the allowance of 10 percent shall be scored as berries failing to meet the requirements of the grade.			
Including in (D):			
(a) For permanent defects .....	8	8	8
(b) For serious damage .....	4	4	4
And, including in (b):			
(i) For serious damage by permanent defects .....	2	2	2
(ii) For decay .....	1	1	1

Dated: September 15, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 91 and 92**

[Docket Number ST-05-01]

RIN 0581-AC48

**Changes in Hourly Fee Rates for Science and Technology Laboratory Services—Fiscal Years 2007–2009**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to change the hourly fee rates for Science and Technology (S&T) Laboratory Services. The agency is proposing to raise these rates to reflect, among other factors, national and locality pay increases for Federal employees and inflation, operating costs, instrumentation and training, and program and agency administrative overhead costs. In the past, AMS has amended its regulations on an as needed basis in order to recover laboratory program costs. With this proposed regulation, AMS is providing for three annual standard hourly fee rate increases for fiscal years

2007–2009. This would provide the agricultural commodity industries and other stakeholders with more timely and relevant information regarding voluntary user fees for laboratory testing services. The agency is also proposing to remove tables and schedules with listings of individual tests and services. Three annual hourly fee rate adjustments are proposed for appeals, holiday, and overtime services to reflect the anticipated increase in cost of providing these laboratory services each fiscal year. The regulations also are updated to identify current facility addresses. Part 92 is obsolete and therefore has been removed.

**DATES:** Comments must be received on or before October 23, 2006.

**ADDRESSES:** Send comments to James V. Falk, Docket Manager, USDA, AMS, Science and Technology Programs, 1400 Independence Avenue, SW., Mail Stop 0272, Washington, DC 20250-0272; telephone (202) 690-4089; fax (202) 720-4631, or e-mail:

*James.falk@usda.gov*. State that your comments refer to Docket No. ST-05-01. Comments may also be submitted electronically through <http://www.regulations.gov>. Submitted comments will be available for public inspection during regular business hours in Room 1090 South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert L. Epstein, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, Mail Stop

0270, 1400 Independence Avenue, SW., Washington, DC 20250-0270, telephone number (202) 720-5231; fax (202) 720-6496, and e-mail: *Robert.epstein@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

Science and Technology (S&T) Programs has been performing voluntary laboratory services under the Agricultural Marketing Act of 1946, as amended, for the AMS commodity programs (Fruit and Vegetable, Cotton, Livestock and Seed, Poultry, Dairy, and Tobacco) and applicable customers in these industries since its inception on August 17, 1988. Before that, voluntary laboratory testing was provided for a user fee by AMS under the various commodity programs. The current standard hourly rate of \$45.00 and the premium hourly rate of \$67.50 have been in effect since publication in the **Federal Register** on October 27, 2000 (65 FR 64302). The standard fee rate for laboratory services is proposed to be increased to \$60.00 per hour in fiscal year 2007, \$63.00 per hour in fiscal year 2008, and \$67.00 per hour in fiscal year 2009. The premium hourly fee rates would also be adjusted for fiscal years 2007 through 2009. An increase in the premium hourly rates over the three fiscal years for laboratory services performed on holidays, appeal samples, and overtime basis is also needed since Science and Technology laboratory personnel may be required to work extended hours of service at the time and a half pay or the double hourly pay to accommodate clients. This is due to