

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-92-301]

Blueberries; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Blueberries by adding another species of cultivated blueberries, eliminating size as a requirement of the grade, revising tolerances and applications of tolerances to percentages of defective berries, specifying allowable amounts for defects caused by scars and well healed broken skins, redefining terms to more clearly reflect current cultural and marketing practices, and providing a format consistent with other recently revised U.S. grade standards. The Agricultural Marketing Service (AMS), in cooperation with industry and other interested parties, has the responsibility to develop and improve standards of quality, condition, quantity, grade and packaging in order to facilitate efficient marketing of agricultural commodities.

EFFECTIVE DATE: March 20, 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, Washington, DC 20090-6456, (202) 720-2185.

SUPPLEMENTARY INFORMATION: The Department 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 the U.S. Standards for Grades of Blueberries 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 this 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 Blueberries, was published in the **Federal Register** on November 19, 1993 (58 FR 61033-61035).

The North American Blueberry Council (NABC), which represents the majority of blueberry growers and packers in the United States and Canada, formally requested USDA to revise the United States Standards for Grades of Blueberries which were last revised in June 1966. The NABC requested that the standards be revised in order to bring them into conformity with current cultural, harvesting, and marketing practices. The NABC contends that due to changes in harvesting practices, more growers using mechanical harvesters versus hand picking, and new improved varieties, the changes are necessary.

The comment period ended January 18, 1994, and a total of nineteen comments were received from growers, shippers, receivers, and researchers. In addition, recommendations were received from inspection personnel.

Nine comments were in favor of the proposal in its entirety. These comments agreed that due to changes in current cultural, harvesting, and marketing practices of blueberries, it was necessary to change the standards as proposed.

Three comments suggested eliminating the basic requirement "not wet." They felt that blueberries that are wet from condensation would be scored against this requirement, and perfectly good blueberries would be scored as defects. AMS believes that the definition under the "damage" section clearly states that wet berries are damaged when "the individual berry is wet from juice from crushed, leaking, or decayed berries, but not due to condensation," and thereby good blueberries would not be scored as defects.

Three comments were in favor of the proposal with some changes. All three of the comments expressed the opinion that a minimum size should be specified, or that size should be part of

the grade. Two of these comments also stated that the ten percent tolerance for attached stems is too high. One of these comments stated that the tolerances should be based on number of defects and not percentages, with no allowance for "leakers." AMS feels that size should not be part of the grade since blueberries are not packed by size. However, the size classification section should be left in the standards for common marketing terminology. The NABC specifically requested that tolerances be in percentages and that an additional allowance be made for attached stems. Further, tolerances based on percentages rather than number of berries would be more simplistic for inspectors, industry, and other interested parties; a chart of the number of berries allowed for various defects would no longer be needed. Since some varieties of blueberries have stems which adhere more readily to the berry, or growing conditions cause the stems to remain attached, a ten percent allowance for attached stems is needed so as to take into account certain varieties with inherent characteristics. Therefore, AMS believes the tolerances for defects and the allowance for attached stems should remain as they were in the proposal.

Two comments opposed the proposed definition of damage by shriveling, which stated "shriveling when the skin is slightly wrinkled." They were of the opinion that the term "slightly wrinkled" meant that the berries would be observed under close scrutiny and when wrinkling was found to any degree the berries would be scored. The commentors proposed that the definition be changed to "shriveling when the wrinkling is readily noticeable." This would mean that only the wrinkling found upon casual observation would be scored as a defect. One of the commentors also felt that having a definition for "damage by green berries" and a definition for "well colored" was redundant. They felt that the "damage by green berries" should be deleted. AMS agrees with the comments as to "shriveling" and the definition of damage by shriveling will be "when the wrinkling is readily noticeable." In regard to the comment of "damage by green berries" and "well colored," AMS feels that green berries would be considered immature berries and berries that are not well colored may be mature but simply do not meet the color requirements. AMS believes that buyers and sellers would want to know the distinction between these two defects.

One comment from an exporter did not address the provisions of the proposal.

One comment stated the following: "stems should not be counted as defects unless excessive—50 or more per pint; shriveled berries should not be counted as defects unless excessive—20 or more per pint; berries with picking scars or split by excessive rain or moisture, but are not overripe, with healed scars, would not be counted as soft berries; and soft berries are those that are overripe, bleeding, and certain to cause molding within 24 hours." AMS believes that all of these issues have been addressed in the revised standards by: Defining under damage and serious damage how much each blueberry may be affected by a certain defect; in the application of tolerance section defining the percentage of blueberries that may be defective in each sample; and in the tolerance section defining the percentage of defective blueberries which are allowed in a load or lot of blueberries.

One recommendation was made concerning the "definitions for damage and serious damage by scars is too loose." It was suggested that only the scars that are fairly smooth and have no depth be scored as outlined in the proposed standards. AMS believes that scars are too small to distinguish as to their smoothness or depth, and has decided to leave the definition of damage and serious damage by scars as proposed.

One recommendation made several suggestions for changing definitions of various defects. Clusters were proposed to be changed to "3 or more joined capstems with more than one berry attached." Shriveling was proposed to be changed to "more than slightly wrinkled." It was recommended that broken skins, regardless of whether they are well healed or not should be scored as serious damage, except for an allowable area around the stem scar. Also, damage by scars should be changed from 20 percent of the surface to 25 percent of the surface. Mummified berries should include in its definition those berries that are in the process of being mummified. AMS does not believe that these changes are warranted due to the inconsistencies these changes would create with other standards and with the scoring of the above defects. However, as stated previously, the definition of "damage by shriveling" will be applied "when shriveling is readily noticeable."

One recommendation suggested an additional grade for higher quality blueberries should be inserted in the standards. Also, size should be determined by weight, since "cup" could be confusing and is not precise enough. Finally, it was felt that the

current size classifications do not allow for loads and/or lots of blueberries that contain both medium and large size berries in the same lot. The NABC made it clear to AMS that it did not want an additional grade in the standards. Also, most commodities are marketed on the basis of U.S. No. 1 and it is felt that other grades would not be necessary. AMS feels that determining size by weight would be more difficult due to the modest size of the berries. AMS did make allowances in the tolerances for "off-size" to allow for blueberries that contain both medium and large size berries in the same lot.

The Agricultural Research Service of the Department stated that it is "not aware of any research data or other information relevant to the possible effect of the 'cosmetic appearance' elements of the proposed rulemaking on pesticide use on blueberries."

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, except for the changes noted above in response to the comments received, and several minor editorial changes made for clarity.

List of Subjects in 7 CFR Part 51

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

PART 51—[AMENDED]

For reasons set forth in the preamble, is amended as follows:

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

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

Subpart—United States Standards for Grades of Blueberries

2. Sections 51.3475 through 51.3479 and the undesignated center headings are revised to read as follows:

General

§ 51.3475 General.

(a) These standards apply only to selected and hybrid varieties of the highbush (*Vaccinium australe* Small and *Vaccinium corymbosum* L.) and rabbiteye (*Vaccinium ashei* Reade) blueberries produced under cultivation, but not to other species of the genus *Vaccinium* nor to the true huckleberries of the genus *Gaylussacia*.

(b) Because of the size differences between varieties and the difference in size preference in various markets, there are no size requirements in the grade.

Therefore, size will not be determined unless specifically requested by the applicant. If requested, size may be specified as provided in § 51.3477.

Grade

§ 51.3476 U.S. No. 1.

"U.S. No. 1" consists of blueberries which meet the following requirements:

- (a) Basic requirements:
 - (1) Similar varietal characteristics;
 - (2) Clean;
 - (3) Well colored;
 - (4) Not overripe;
 - (5) Not crushed, split, or leaking; and
 - (6) Not wet.
- (b) Free from:
 - (1) Attached stems;
 - (2) Mold;
 - (3) Decay;
 - (4) Insects or when there is visible evidence of the presence of insects;
 - (5) Mummified berries; and
 - (6) Clusters.
- (c) Free from damage caused by:
 - (1) Shriveling;
 - (2) Broken skins;
 - (3) Scars;
 - (4) Green berries; and
 - (5) Other means.

(d) Tolerances as specified in §§ 51.3478 (a) and (b) and applied pursuant to § 51.3479.

Size Classifications

§ 51.3477 Size classifications.

The following size classifications may be used in specifying size of blueberries:

- (a) *Extra large*. Less than 90 berries per cup;¹
- (b) *Large*. 90 to 129 berries per cup;¹
- (c) *Medium*. 130 to 189 berries per cup;¹ and,
- (d) *Small*. 190 to 250 berries per cup.¹
- (e) For tolerances see § 51.3478.

Tolerances

§ 51.3478 Tolerances.

In order to allow for variations incident to proper grading and handling, based on sample inspection, the following tolerances, by count, shall be allowed:

- (a) *For defects at shipping point.*² Ten percent for blueberries which have attached stems. Additionally, not more than 8 percent of the blueberries may be below the remaining requirements of the grade: *Provided*, that included in this amount not more than 4 percent shall be allowed for defects causing serious

¹ Cup equals 237 ml, 1/2 pint, or 2 gills.

² Shipping point, as used in the standards in this subpart, 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.

damage, including in this latter amount not more than 1 percent for blueberries which are affected by mold or decay.

(b) *For defects en route or at destination.* Ten percent for blueberries which have attached stems.

Additionally, not more than 12 percent of the blueberries may be below the remaining requirements of the grade: *Provided*, that included in this amount not more than the following percentages shall be allowed for defects listed:

(1) 8 percent for blueberries which fail to meet the requirements for this grade because of permanent defects; or,

(2) 6 percent for blueberries which are seriously damaged, including therein not more than 4 percent for blueberries which are seriously damaged by permanent defects and not more than 2 percent for blueberries which are affected by mold or decay.

(c) *Off-size:* When size is designated according to one or more of the size classifications in § 51.3477, not more than 10 percent of the samples in any lot or one sample, whichever is the greater number, may fail to meet the range in count specified.

Application of Tolerances

§ 51.3479 Application of tolerances.

Individual samples are subject to the following limitations: *Provided*, that the averages for the entire lot are within the tolerances specified for the grade:

(a) For a tolerance of 10 percent or more, individual samples may contain not more than one and one-half times the tolerance specified.

(b) For a tolerance of less than 10 percent, individual samples may

contain not more than double the tolerance specified.

3. Sections 51.3482 and 51.3483 are revised to read as follows:

§ 51.3482 Well colored.

Well colored means that more than one-half of the surface of the individual berry is blue, bluish-purple, purple, bluish-red, or bluish-black.

§ 51.3483 Overripe.

Overripe means that the individual berry is dead ripe, the flesh is soft and mushy, and past commercial utility.

4. Sections 51.3484 and 51.3485 are removed and § 51.3486 is redesignated 51.3484 and is revised to read as follows:

§ 51.3484 Damage.

Damage means any specific defect described in this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the blueberries. The following specific defects shall be considered as damage:

(a) Wet berries when the individual berry is wet from juice from crushed, leaking, or decayed berries, but not due to condensation;

(b) Clusters when there are three or more joined capstems with at least one berry attached;

(c) Shriveling when the wrinkling is readily noticeable;

(d) Broken skins when not well healed or when well healed and readily noticeable, except for an allowable area within a $\frac{1}{8}$ inch (3.2 mm) circle centered at the stem scar;

(e) Scars when affecting more than 20 percent of the surface of the individual berry; and,

(f) Green berries when one-half or more of the berry is green.

5. Section 51.3487 is redesignated 51.3485 and is revised to read as follows:

§ 51.3485 Serious damage.

Serious damage means any specific defect described in this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the blueberries. The following specific defects shall be considered as serious damage:

(a) Decay;

(b) Moldy berries;

(c) Overripe berries;

(d) Crushed, split, or leaking berries;

(e) Mummified berries when the individual berry is dried up, withered or shrunk;

(f) Insects or when there is any visible evidence of the presence of insects, including but not limited to an insect, the insect larva, feeding, webbing or frass;

(g) Broken skins when not well healed; and,

(h) Scars when affecting more than 50 percent of the surface of the individual berry.

Dated: February 23, 1995.

Lon Hatamiya,

Administrator.

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