

# 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-07-0002; FV-06-304]

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

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

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is withdrawing the document soliciting comments on its proposal to amend the voluntary United States Standards for Grades of Table Grapes (European or Vinifera Type). After reviewing and considering the comments received, the agency has decided not to proceed with this action.

**DATES:** The proposed rule published at 71 FR 55367, Sept. 22, 2006 is withdrawn as of June 29, 2007.

**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>.

#### 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 berries in consumer containers for shipments that are en route or at destination. The petitioners stated that a change, specific to consumer containers, was warranted as the majority of table grapes now being sold in consumer containers allow shattered berries to be fully utilized/sold. A consumer container refers to the

individual consumer units of table grapes within a master container or lug, which are either marked for individual sale or unmarked; in clamshells, bags or other marketable individual units. The consumer units can be either sealed units or unsealed units within the master container.

Prior to undertaking detailed work to develop a proposed revision to the standards, AMS published a document on January 24, 2006, in the **Federal Register** (71 FR 3818) soliciting comments on a proposal to revise the standards. Based on comments received, AMS published a second document on September 22, 2006, in the **Federal Register** (71 FR 55367) proposing to modify the standard by adding a 10 percent allowance for shattered grapes in consumer containers.

AMS received fourteen timely 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. Two 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. 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 was scored as a defect 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 see no reason to provide a special allowance for shattered berries in consumer containers. They stated that the proposed allowance will enable more lower-quality product to qualify for the U.S. No. 1 grade. They 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 are taken into account. PACA tolerances

may be taken into account when AMS resolves contract disputes under the PACA. The receiver's association also suggested that consumers view shattered grapes as unfit to eat and throw away such grapes instead of consuming them.

The comment received from the grower and shipper of table grapes opposing the revision stated that they did not feel that it was appropriate to change the current grade standards and thereby downgrade the industry's and consumers' perception of table grapes in general. They 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 will not be considered at this time.

The one request for an extension to the comment period was received from a receiver/wholesaler after the comment period had ended. AMS believed that extending the comment period would not facilitate resolution and would only prolong the current state of uncertainty.

AMS has reviewed all comments, noting strong arguments in both support and opposition of the proposal, and determined that there is not a clear consensus among industry. Therefore, AMS has decided not to proceed with this action. AMS will continue to work with interested parties regarding the subject of shattered berries.

**Authority:** 7 U.S.C. 1621-1627.

Dated: June 21, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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