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,

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

(202) 720-2185.

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.