

# 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-2007-0010; FV-06-302]

#### United States Standards for Grades of Sweet Cherries

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS), has reviewed the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. As a result, AMS is proposing to revise the sweet cherry standard to include standardized row sizes into the standard. These standardized row sizes would establish a uniform basis for defining size in the industry.

**DATES:** Comments must be received by May 29, 2007.

**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 Sweet Cherries are available either through the address cited above or 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. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

#### Regulatory Flexibility Act and Paperwork Reduction Act

AMS reviewed the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. AMS identified the United States Standards for Grades of Sweet Cherries for possible revision. The United States Standards for Grades of Sweet Cherries was last revised in 1971. The standard row sizes being proposed will make the standards current with today's marketing trends and practices.

#### 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.

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.

This rule will revise the U.S. Standards for Grades of Sweet Cherries 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. The number of sweet cherry 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.

According to the National Agricultural Statistics Service (NASS) report of the 2002 Census of Agriculture, these are 8,043 sweet cherry farms in the United States. Using additional data from the Noncitrus Fruits and Nuts Summary for 2005, total fresh utilization of sweet cherries was 167,190 tons. Furthermore, the price per ton for sweet cherries in 2005 was \$2,610 and the value of sweet cherries utilized as fresh was \$436,992,000. Based on the number of farms (8,043) the average producer revenue from the sale of fresh sweet cherries is estimated at approximately \$54,332 per year. Thus, the majority of fresh sweet cherry producers may be classified as small entities.

This proposed rule would incorporate standard row sizes into the standard. The effects of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities.

This proposed action would establish standard row sizes and make the standard more consistent and uniform with marketing trends and practices. The size of sweet cherries are described in "rows" and this practice dates back to when the industry place-packed the top layer in the box. For example; a tight fit of ten cherries across the narrow face of the lug became known as size "10 row" cherries.

This proposed action will not impose any additional reporting or

recordkeeping requirements on either small or large sweet cherry producers, handlers, or importers. USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there is a marketing order program (7 CFR part 923) which regulates the handling of sweet cherries. Sweet cherries under a marketing order have to meet certain requirements set forth in the U.S. grade standards.

Alternatives were considered for this action. One alternative would be to not issue a proposed rule. However, the need for this revision has increased as a result of changing market characteristics. Since the purpose of these standards is to facilitate the marketing of agricultural commodities, not revising the sweet cherries standard could result in confusion in terms of industry marketing and the use of the U.S. standards. AMS is seeking comments regarding how, if at all, marketing would be improved by

incorporating standard row sizes into the standard. Further, comments outlining any additional costs or benefits would be helpful in determining a final decision after the comments are received and reviewed. AMS will also review any other suggested revisions and would be interested in how they would improve the marketing of sweet cherries and any associated costs and/or benefits to the industry.

**Background**

Prior to undertaking detailed work to develop a proposed revision to the standard, AMS published a notice on January 25, 2006, in the **Federal Register** (71 FR 4100) soliciting comments on a proposal to incorporate row sizes into the standards.

In response to our request for comments, AMS received two comments from the industry. These comments are available by accessing the AMS, Fresh Products Branch Web site

at: <http://www.ams.usda.gov/fv/fpbdoCKETlist.htm>.

The first comment was from a grower/shipper which supported incorporating a standard row size into the Standards for Grades of Sweet Cherries. The second comment was from a trade association representing wholesale receivers. The comment only stated that the association saw no reason to incorporate the standard row size into the U.S. Grade Standards at this time. However, AMS believes incorporating the size will be beneficial and reflect current marketing practices.

Accordingly, AMS is proposing to incorporate standard row sizes into the U.S. standards. The row size corresponds with current row sizes being used in the industry. The section 51.2660 Metric Conversion Table would be designated as section 51.2660 Standard Row Sizes to show the following definition for row size with corresponding sizes in inches:

Row sizes .....	9	9½	10	10½	11	11½	12	12½	13
Size in inches .....	75/64	71/64	67/64	64/64	61/64	57/64	54/64	51/64	48/64

Section 51.2661 would be the standard and the current § 51.2660 Metric Conversion Table will be re-designated as § 51.2661.

The official grade of a lot of sweet cherries covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (§ 51.1 to 51.61).

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

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

**PART 51—[AMENDED]**

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

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

**Authority:** 7 U.S.C. 1621–1627.

2. Section 51.2660 is revised and § 51.2661 is added to read as follows:

**Subpart—United States Standards for Grades of Sweet Cherries**

**§ 51.2660 Standard Row Sizes.**

Row sizes .....	9	9½	10	10½	11	11½	12	12½	13
Size in inches .....	75/64	71/64	67/64	64/64	61/64	57/64	54/64	51/64	48/64

**§ 51.2661 Metric Conversion Table.**

Inches	Millimeters (mm)
8/64 equals .....	3.2
19/64 equals .....	6.4
24/64 equals .....	9.5
32/64 equals .....	12.7
40/64 equals .....	15.9
48/64 equals .....	19.1
51/64 equals .....	20.2
52/64 equals .....	20.6
54/64 equals .....	21.4
59/64 equals .....	22.2
1 equals .....	25.4
18/64 equals .....	28.6
119/64 equals .....	31.8
124/64 equals .....	34.9

Dated: March 23, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 915**

[Docket No. AO–254–A10; AMS–FV–06–0220; FV06–915–2]

**Avocados Grown in South Florida; Recommended Decision on Proposed Amendments of Marketing Order No. 915**

**AGENCY:** Agricultural Marketing Service (AMS), USDA.

**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This is a recommended decision regarding proposed