(2) Decay.

(e) Berries not damaged by: Any other cause.

(f) Bunches not damaged by:

(1) Shot berries;

(2) Dried berries;

(3) Other defective berries;

(4) Any other cause.

(g) Stems not damaged by:

(1) Freezing;

(2) Any other cause.

(h) Size:

(1) For berries: Exclusive of shot berries and dried berries, 75 percent, by count, of the berries on each bunch shall have the minimum diameters indicated for varieties as follows:

(i) Thompson Seedless, Perlette, Delight, Beauty Seedless, Superior Seedless, Flame Seedless and other seedless varieties nine-sixteenths of an inch.

(ii) Other varieties ten-sixteenths of an inch.

(2) For clusters/bunches: In this grade grapes shall consist of at least a two berry cluster ranging to clusters and/or bunches of grapes not greater than five ounces in weight. See Section 51.913.

(i) For tolerances see Section 51.886.

3. Section 51.886 is amended by revising the introductory text of paragraph (b) and adding a new paragraph (c) to read as follows:

§ 51.886 Tolerances.

* * * * *

(b) In order to allow for variations incident to proper grading and handling in each of the foregoing grades except U.S. No. 1 Institutional, tolerances, by weight, other than for maturity, are provided as set forth in Tables I and II.

* * * * *

(c) In order to allow for variations incident to proper grading and handling in the U.S. No. 1 Institutional grade only, tolerances, by weight, other than for maturity, are provided as set forth in Tables Ia and IIa of this section.

TABLE IA.—TOLERANCES AT SHIPPING POINT FOR U.S. NO. 1 INSTITUTIONAL GRADE ONLY [1]

[Percent]

Factor	U.S. No. 1 institutional
(A) For clusters/bunches failing to meet color requirements.	10.
(B) For clusters/bunches failing to meet requirements for minimum diameter of berries.	10.
(C) For offsize clusters/bunches	4.
(D) For clusters/bunches and berries failing to meet the remaining requirements for the grade.	8.
Including in (D):	
(a) For serious damage	2

TABLE IA.—TOLERANCES AT SHIPPING POINT FOR U.S. NO. 1 INSTITUTIONAL GRADE ONLY [1]—Continued

[Percent]

Factor	U.S. No. 1 institutional
And, including in (a):	
(i) For decay	½ of 1.

[1]Shipping point, as used in these standards, 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.

TABLE IIA.—TOLERANCES EN ROUTE OR AT DESTINATION FOR U.S. NO. 1 INSTITUTIONAL GRADE ONLY

Factor	U.S. No. 1 institutional
(A) For clusters/bunches failing to meet color requirements	10.
(B) For clusters/bunches failing to meet requirements for minimum diameter of berries	10.
(C) For offsize clusters/bunches	4.
(D) For clusters/bunches and berries failing to meet the remaining requirements for the grade	12.
Including in (D):	
(a) For permanent defects	8.
(b) For serious damage	4.
And, including in (b):	
(i) For serious damage by permanent defects	2.
(ii) For decay	1.

4. In § 51.888 paragraph (a) is revised to read as follows:

§ 51.888 Maturity requirements.

(a) In the case of grapes grown in Arizona or California, ''mature'' means grapes in any lot shall meet the maturity requirements for the variety as set forth in the applicable State Agricultural Laws and Regulations referenced in this section. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from, in the case of Arizona maturity regulations, Arizona Department of Agriculture, Citrus, Fruit and Vegetable Standardization, 1688 W. Adams, Phoenix, AZ 85007 or in the case of California maturity regulations, California Department of Food and Agriculture, Fruit and Vegetable Quality Control, Standardization Section, 1220 N Street, P.O. Box 942871, Sacramento, California 94271–0001 or copies of both regulations may be inspected at USDA, AMS, F&VD, FPB, Standardization Section, Room 2065–S, 14th and Independence Avenue, Washington, DC 20250 or at the Office of the Federal Register, Suite 700, 800 North Capitol, Washington, DC.

(1) Arizona maturity regulations are contained in Chapter 4—Plant Services Division, Article 7, Fruit And Vegetable Standardization, Section R3–4–733 Table Grape Standards, Effective January 6, 1994.

(2) California maturity regulations are contained in The California Code of Regulations, Title 3, Subchapter 4. Fresh Fruits, Nuts and Vegetables, Article 25, Table Grapes and Raisins, February 28, 1992.

* * * * *

§ 51.913 [Redesignated as § 51.914]

5. In Part 51, Subpart—United States Standards for Grades of Table Grapes (European or Vinifera Type), § 51.913 is redesignated as § 51.914 and a new § 51.913 is added under the heading ''Definitions'' to read as follows:

§ 51.913 Clusters.

''Clusters'' as used in these standards in reference to the U.S. No. 1 Institutional grade only shall be defined as two or more berries sharing a common point of attachment.

Dated: March 11, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–6343 Filed 3–18–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 925

[Docket No. FV95–925–1IFR]

Grapes Grown in a Designated Area of Southeastern California; Interim Final Rule to Revise Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This rule adds two new containers to the list of containers authorized for use by table grape handlers regulated under the marketing order. This rule also reduces the minimum net weight of containers of California table grapes from 22 pounds to 20 pounds and for grapes packed in poly bags from 20 pounds to 18 pounds. The marketing order regulates the handling of table grapes grown in a designated area of Southeastern California. The marketing order is locally administered by the California Desert Grape Administrative Committee (CDGAC). This rule allows for more

efficient use of containers and helps handlers meet industry needs.

DATES: Effective on March 19, 1996; comments must be received by April 18, 1996 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be submitted in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P. O. Box 96456, Room 2523–S, Washington, DC 20090–6456, or by facsimile at (202) 720–5698. Comments should reference this docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 690–3670; or Rose M. Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 [7 CFR Part 925], as amended, regulating the handling of table grapes grown in a designated area of Southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this interim final rule in conformance with Executive Order 12866.

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This interim final rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California table grapes subject to regulation under the order and approximately 80 table grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. A majority of handlers and producers are classified as small entities.

This action is in accordance with § 925.52(a)(4) of the order. This section authorizes the Secretary to fix the size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Currently, § 925.304(b)(2) of the regulations specifies that the minimum net weight requirement for grapes in any container, except for containers containing grapes packed in sawdust, cork, excelsior, or similar packing material, or packed in bags or wrapped in plastic or paper, and experimental containers, shall be 22 pounds based on the average net weight of grapes in a representative sample of containers. Containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers are required to meet a net weight requirement of 20 pounds.

Section 925.304(b)(1) of the regulations specifies the dimensions of six containers that may be used by handlers of table grapes and authorizes the use of other types and sizes of containers on an experimental basis.

The CDGAC met on November 27, and December 4, 1995, and unanimously recommended changes in current container requirements. Specifically, the CDGAC recommended reducing the minimum net weight of containers from 22 to 20 pounds and for containers of grapes wrapped or packed in poly bags from 20 to 18 pounds, effective April 20, 1996. The CDGAC also unanimously recommended adding two new containers (38S, 12×20 inches) and (38T, 13 ⅛×15 ⅞ inches) to the list of authorized containers. These changes are intended to improve the quality of grapes delivered to consumers and reduce handling costs.

The genesis for discussion of revising containers used to pack grapes began about 6 years ago when the recyclability of packaging materials became of interest to consumers worldwide and then to retailers who bore the brunt of consumers' concern. In addition to the environmental concern expressed by consumers, retailers were concerned about the increasing costs of disposing of packing and shipping materials.

Simultaneously, in an effort to differentiate themselves in the marketplace, many in the retail industry began demanding that grape growers provide custom packs. One customer wanted only a certain type of bag, another wanted only 5-kilo bags, another wanted bags with nothing printed on them, while yet another wanted a special store code.

These kinds of demands from the retail and food service industry led to a great deal of packaging experimentation within the California grape industry. It also led to the realization that it had been 25 years since there had been any quantifiable packaging research. The industry decided to take a critical look at grape packaging and determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition; and if not, what changes needed to be made to improve delivery. Toward that end, the California Table Grape Commission funded a three-year research project designed to answer a simple question: what types of containers get grapes to the consumer in the best possible condition?

Grapes are a fragile product. The current method of packing is a holdover from 25 years ago when grapes were sold at auctions and it was considered a marketing advantage to overpack the box so that when buyers looked at the box it was bulging with fruit. Too often though, what they did not see was the condition of the fruit inside; crushed,

split or falling off the stem. In addition, the standard lug box in use today was designed to fit railroad cars. Shipping grapes by rail car is a part of the industry's picturesque past.

The study of table grape packaging was conducted by the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. The objective of the study was to develop knowledge concerning packaging that allows the movement of table grapes from the field to the consumer in the best possible condition.

The study looked at multiple varieties of grapes grown in California, packed in cartons of a wide variety of materials, dimensions, and packing depths. The study monitored numerous shipments from the field to the grocery store. The conclusion of the study was that the California table grape industry should reduce the weight of its containers by 2 pounds in order to get the fruit delivered to consumers in the best possible condition. At the reduced weight, the damage to the grapes, particularly in terms of bruising, splitting and shattering, decreases. Table grapes of most varieties suffered considerable damage when packed at net weights of 22 or 23 pounds. The damage was reduced considerably when the pack weights were reduced to 20 to 21 pounds.

Thus, the CDGAC's recommendation to reduce the minimum net weight requirements is expected to result in higher quality grapes being offered to consumers. This should increase satisfaction, strengthen demand, and improve returns to growers and handlers.

Currently, most grapes packed in California are palletized on 35-×42-inch or 53-×42-inch pallets prior to shipment. When received by wholesalers or retailers, the grapes are unloaded and restacked on 48-×40-inch pallets. In response to these concerns by their customers, grape handlers are beginning to discontinue use of the 35-×42- inch or 53-×42-inch pallets.

Grocery and wholesale warehouse operations use 48-×40-inch pallets as the standard pallet for most products. The bulk of product sold at retail outlets (e.g., cereal, paper products, canned goods, etc.) are dry goods. These products are generally shipped on 48-×40- pallets. Consequently, the distribution channel is set up to accommodate 48-×40-inch pallets.

Nonstandard pallets such as those used by grape handlers must be disposed of at the receivers' expense. However, with the use of 48-×40-inch pallets, which can be recycled, there should be a reduction in expenses associated with pallets. The recycling program allows the receiver to use the pallet more than once or remove it from the waste stream to use or sell.

These changes in container requirements are supported by the California Department of Agriculture, the California Grape and Tree Fruit League, the California Table Grape Commission, the Food Marketing Institute, and the National Association of Perishable Agricultural Receivers. These organizations have all agreed that the reduction in net weight is necessary to facilitate the implementation of an industry-wide adoption of the standardized 48-×40-inch pallet and the incidence of damage to fruit due to over packing.

Through the research conducted the CDGAC determined that other container size and net weight options available were not in the best interest of the industry. Further, wholesalers and retailers support the recommended changes, and believe it is the best option.

Thus, this rule allows the industry to use more efficient containers and provides handlers with more flexibility in packing table grapes. Imported table grapes will not be affected by this rule.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the CDGAC's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This action relaxes handling requirements currently in effect for table grapes grown in designated areas of Southeastern California; (2) California table grape handlers are aware of this action which was unanimously recommended by the CDGAC at a public meeting, and they will need no additional time to comply with the relaxed requirements (since they have the option of continuing to use previously approved containers; (3) California table grape shipments begin approximately April 20, 1996, and this rule needs to be in effect as soon as possible; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended to read as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 925.304, paragraph (b)(2) is revised and paragraphs (b)(1)(vi) and (b)(1) (vii) are redesignated as paragraphs (b)(1)(vii) and (vii) and new paragraphs (b)(1) (vi) and (vii) are added to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(b) * * *

(1) * * *

(vi) Grape lug with dimensions in inches of 5 to 9 inches (inside) × 11 11/16 to 12 (outside) x 19 11/16 to 20 (outside), specified as container 38S;

(vii) Grape lug with dimensions in inches of 6 5/8 to 7 1/2 (inside) × 13 1/8 (outside) × 15 7/8 (outside), specified as container 38T;

* * * * *

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material, or packed in bags or wrapped in plastic or paper, and experimental containers, shall be 20 pounds based on the average net weight of grapes in a representative sample of containers. Containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight requirement of 18 pounds.

* * * * *

Dated: March 11, 1996.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

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