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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 35

[Doc. No. AMS-FV-10-0091; FV11-35-1 FR]

#### Regulations Issued Under the Export Grape and Plum Act; Revision to the Minimum Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the requirements under the Export Grape and Plum Act. This rule changes the minimum bunch weight requirement for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This rule also updates the list of European countries defined in the regulation and removes the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety. This action was recommended by the California Grape and Tree Fruit League (League).

**DATES:** *Effective Date:* March 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dawana J. Clark, Marketing Specialist, or Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (301) 734-5243, *Fax:* (301) 734-5275, or *E-mail:* [Dawana.Clark@ams.usda.gov](mailto:Dawana.Clark@ams.usda.gov) or [Kenneth.Johnson@ams.usda.gov](mailto:Kenneth.Johnson@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or *E-mail:* [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under authority of the Export Grape and Plum Act, as amended (7 U.S.C. 591-599), hereinafter referred to as the "Act." The Act promotes the foreign trade of U.S. grown grapes and plums by authorizing the implementation of regulations with minimum grade, quality, container, container marking, and inspection requirements.

This final rule amends "Regulations Issued Under Authority of the Export Grape and Plum Act" (regulations) (7 CFR part 35). The regulated entities are shippers, exporters, and carriers of table grapes for export.

This final rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Section 35.11 of the regulations establishes minimum size and quality requirements for export shipments of any variety of *vinifera* species table grapes. Currently, such grapes shipped to Japan, Europe, or Greenland must meet a minimum grade of U.S. Fancy Table as specified in the U.S. Standards for Grades of Table Grapes (U.S. Standards) (7 CFR part 51, §§ 51.880-51.992), with the additional requirement that bunches must each weigh at least one-half pound. Section 35.11 also defines the countries in Europe for which the export regulation applies. Finally, § 35.11 provides an additional 2 percent tolerance for sealed berry cracks on both the Ribier and Exotic varieties, which must otherwise meet the minimum requirements for the U.S. No. 1 Table grade as contained in the U.S. Standards.

This final rule revises § 35.11(a) of the order's administrative rules and regulations by changing the minimum bunch weight requirement for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This final rule further revises § 35.11(a) by updating the list of European countries defined in the regulation. Finally, this rule revises § 35.11(b) by removing the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety.

The Board of Directors of the League, which represents a substantial portion

of the fresh table grape industry, unanimously recommended that the one-half pound bunch size minimum requirement be removed from § 35.11(a) of the regulations. This makes the minimum bunch size requirement one-quarter pound as defined in the U.S. Standards for the U.S. Fancy Table grade.

There has been an increasing retail demand for table grapes packaged in plastic clamshells, particularly for export markets. One of the most popular package sizes is the 500 gram (approximately 1.1 pounds) clamshell. However, shippers find it difficult to fit two larger (minimum one-half pound) grape bunches into the 500 gram clamshell. This change allows shippers to use smaller (minimum one-quarter pound) bunches to fill the smaller clamshell packages. This change offers shippers greater flexibility in packaging and allows them to pack a greater portion of the crop into the clamshell packages that are popular in the marketplace. The League believes this change positions shippers and exporters to better meet market demand while maintaining pack quality.

The League further recommended that the list of countries used to define the term *Europe* in § 35.11(a) of the regulations be updated to include the current names of European countries for which the export regulations apply. Specifically, the names "Czechoslovakia," "East Germany," "West Germany," and "Yugoslavia" are deleted, and the following countries are added to the remaining list: Bosnia, Croatia, Czech Republic, Germany, Herzegovina, Macedonia, Montenegro, Serbia, and Slovenia. Such action clarifies the European destinations for which the export regulations are applicable.

Finally, the League recommended that § 35.11(b) be revised by removing the additional 2 percent tolerance for sealed berry cracks on Exotic variety grapes. This variety is no longer produced on a commercial basis, and the additional tolerance is no longer warranted.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly,

AMS has prepared this final regulatory flexibility analysis.

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.

Because California table grapes represent the bulk of U.S. production, it is assumed that an analysis of the effects of this final rule upon members of the California table grape industry is representative of the entire U.S. industry. According to industry statistics, at least 98 percent of U.S. table grapes are produced in California. Approximately 35 percent of the U.S. table grape crop is exported. There are approximately 550 table grape producers in California, and approximately 75 table grape shippers. The number of table grape exporters and carriers is unknown.

Small agricultural producers are defined as those having annual receipts of less than \$750,000; and small agricultural service firms, including shippers, exporters, and carriers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000. USDA's National Agricultural Statistics Service reports that California table grape production for 2009 was 755,000 tons, valued at \$510 per ton or \$385,050,000. Average receipts for California's 550 producers would thus be approximately \$700,090, which is lower than the SBA threshold of \$750,000 for small producers. According to USDA's Foreign Agricultural Service, 335,300 tons of fresh grapes, valued at \$588,461,000, were exported from the U.S. in 2009. Assuming that 98 percent of exported grapes were produced in California, average 2009 receipts for California's 75 shippers would have been around \$7,700,000, which is higher than the SBA threshold of \$7,000,000 for small agricultural firms.

Based upon the preceding calculations, it could be concluded that the majority of California (and therefore, U.S.) table grape producers could be classified as small entities, and that the majority of shippers could be classified as large entities, according to SBA definitions. However, the League believes that a small number of shippers ship a majority of the volume, and that the majority of California table grape shippers could be classified as small entities under SBA's standards. No information regarding the number or size of U.S. table grape exporters and carriers is available.

This final rule is issued under authority of the Export Grape and Plum

Act, as amended (7 U.S.C. 591–599). This rule amends the “Regulations Issued Under Authority of the Export Grape and Plum Act” (7 CFR part 35) by changing the minimum bunch weight requirement specified in § 35.11(a) for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This rule further revises § 35.11(a) by updating the list of European countries defined in the regulation. Finally, this rule revises § 35.11(b) by removing the additional 2 percent tolerance for sealed berry cracks on the Exotic grape variety.

The League met on June 24, 2010, and unanimously recommended revising the minimum size requirements to allow a one-quarter pound minimum bunch size, instead of the one-half pound minimum bunch size currently specified in the regulations. The one-quarter pound minimum bunch size is specified in the U.S. Standards for U.S. Fancy Table grade grapes, which are incorporated by reference in the regulations. The League also recommended updating the list of European countries defined in the regulation to reflect the currently recognized names of those countries. Finally, the League recommended removing the additional 2 percent tolerance for sealed berry cracks in the Exotic grape variety. This variety is no longer in commercial production, and an additional tolerance for defects in that variety is no longer warranted.

The League believes that adhering to the smaller bunch size requirement currently specified in the U.S. Standards for U.S. Fancy Table grade will have a beneficial impact on the entire industry. It is difficult to fill the smaller clamshells with the larger bunches of grapes, thus limiting the number of clamshells that can be shipped. It is easier to fill the clamshells with smaller bunches, which fit into the packages better. Therefore, the League believes that the industry will be able to ship a greater number of 500 gram clamshells to meet market demand. Although they did not identify any potential additional costs to making this change, the League believes that the impact of any additional costs will be outweighed by the advantage of presenting U.S. table grapes in packages most desirable in the retail market. The benefits of this action will be a gain in the overall amount of product sold and an increase in returns to producers, shippers, exporters, and carriers, regardless of size.

Updating the list of European countries for which the export regulations apply and removing the additional 2 percent tolerance for sealed

berry cracks on the obsolete Exotic variety merely update the regulations to reflect current terminology and industry trends. These changes are not expected to have any economic impact on large or small entities.

The League recommended that these changes be effective for the 2011 harvesting season, which begins approximately May 1, 2011. These changes will remain in effect on a continuing basis, beginning with the 2011 season. These actions allow for more practical and efficient packaging while maintaining the overall quality of exported table grapes. These recommended actions are intended to allow shippers and exporters to be more competitive in the marketplace, thereby selling more product.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large table grape shippers, exporters, or carriers. As with all Federal regulatory marketing programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on December 13, 2010 (75 FR 77561). Copies of the rule were sent to the League, and the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 12, 2011, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period. The commenter, representing a large grower of California table grapes, opposed the proposed change. The commenter disagreed with the analysis in the proposed rule that the change would maintain the overall quality of exported table grapes. The commenter claimed the overall quality would be diminished by this change, stating that smaller bunches mean lower quality, and reduced weight per bunch results in a more rapid postharvest deterioration of grapes.

The export grape regulations issued under the Act are tied to a U.S. Fancy Table grade as specified in the U.S. Standards. The size requirement for a

U.S. Fancy Table grade is a bunch size of not less than one-quarter pound. In terms of international trade, the Codex standard and the United Nations Economic Commission for Europe standard for table grapes both set minimum bunch size at 75 grams. All three standards are established through extensive research and are used to define and measure quality.

Considering these three standards of domestic and international quality, this relaxation would continue to meet U.S. Standards and exceed international standards (one-quarter pound equals 113.4 grams). Additionally, size is just one element of table grape quality, with overall quality measured by numerous characteristics. Under this change, all other characteristics such as maturity, firmness, shatter, development, appearance, damage, and decay, remain the same. Consequently, overall quality should remain largely unaffected by this change.

Further, a review of table grape research did not identify any information that would indicate this reduction in bunch size would affect overall quality.

In terms of postharvest deterioration, research suggests that deterioration is most impacted by the handling and treatment of the grape prior to shipment. The factors most frequently referred to in the research focusing on postharvest deterioration were water loss, temperature, and proper fumigation.

In addition, information provided by the University of California<sup>1</sup> regarding the postharvest movement of table grapes indicates that overpacking containers can have a detrimental effect on quality, resulting in increased bruising and damage to the fruit. The change to allow a smaller bunch size was recommended because it can be difficult to fit one-half pound bunches into the smaller clamshells. One-quarter pound bunches fit this particular packaging better. As such, for this particular package, the reduction in bunch size may actually improve overall postharvest quality and reduce deterioration during shipment.

The commenter also suggested this change be postponed to allow buyers and sellers more time to consider its ramifications. However, USDA believes the table grape industry is familiar with this issue and the merits of the one-quarter pound bunch size, and sees no compelling reason to postpone this action.

As noted earlier, California produces approximately 98 percent of United States table grapes. California table grape shippers already pack to a one-quarter pound bunch size for domestic shipments, so they are familiar with this bunch size. Also, this change was unanimously recommended by the Board of Directors of the League, which represents a substantial portion of the fresh table grape industry.

Further, under the Federal marketing order for California table grapes (order), a regulatory change to facilitate the packing of small clamshells was also recently discussed and implemented. The change was recommended because shippers were having difficulty packing smaller clamshells, even at the one-quarter pound bunch size. To address this, the minimum bunch size for clamshells of 2 pounds or less was relaxed on a one-year trial basis (74 FR 38323; August 3, 2009), and then made permanent under the order following the success of the trial period (75 FR 34343; June 17, 2010). With implementation of this change, 20 percent of the total weight in smaller clamshell packages may consist of grape clusters that weigh less than one-quarter pound and have at least five berries each.

The commenter also stated that if the change is permitted, the rule should require container labels to warn buyers that the package contains bunches weighing less than one-half pound. USDA finds nothing in the proposed change that would warrant any sort of warning label.

Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including information and recommendations submitted by the League and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this change needs to be in place prior to the 2011 harvesting season, which begins approximately May 1, 2011. Further, shippers are aware of this rule, which was

recommended by the League on June 24, 2010. Also, a 30-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 35

Administrative practice and procedures, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 35 is amended as follows:

#### PART 35—Export Grapes and Plums

■ 1. The authority citation for 7 CFR part 35 continues to read as follows:

**Authority:** 48 Stat. 734; 7 U.S.C. 591–599.

■ 2. In § 35.11, paragraphs (a) and (b) are revised to read as follows:

#### 35.11 Minimum requirements.

\* \* \* \* \*

(a) Any such variety for export to destinations in Japan, Europe (defined to mean the following countries: Albania, Austria, Belgium, Bosnia, Bulgaria, Croatia, Czech Republic, Denmark, England, Finland, France, Germany, Greece, Herzegovina, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Macedonia, Montenegro, Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, Scotland, Serbia, Slovenia, Spain, Sweden, Switzerland, Wales), or Greenland shall meet each applicable minimum requirement of the U.S. Fancy Table grape grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) (§§ 51.880–51.912 of this title). The Black Corinth variety shall be exempt from bunch and berry size requirements.

(b) Any such variety for export to any foreign destination, other than destinations in Japan, Europe, Greenland, Canada, or Mexico, shall meet each applicable minimum requirement of the U.S. No. 1 Table grape grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) (§§ 51.880–51.912 of this title), except that an additional 2 percent tolerance for sealed berry cracks on the Ribier variety is allowed. The Black Corinth variety shall be exempt from bunch and berry size requirements.

\* \* \* \* \*

Dated: March 11, 2011.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–6130 Filed 3–15–11; 8:45 am]

**BILLING CODE 3410–02–P**

<sup>1</sup> Kadar, A.A., Postharvest Technology of Horticultural Crops, University of California, Agriculture and Natural Resources, 2002.