

# 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 35

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

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on proposed revisions to the requirements under the Export Grape and Plum Act. The proposed action would change the minimum bunch weight requirement for grapes exported to Japan, Europe, and Greenland from one-half pound to one-quarter pound. This rule would also update the list of European countries defined in the regulation and remove 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:** Comments must be received by January 12, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document 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, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the

individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**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 proposed 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 proposed rule would amend "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 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 proposal 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 (standards) (7 CFR part 51, sections 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 standards.

This proposed rule would revise § 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 rule would further revise § 35.11(a) by updating the list of European countries defined in the regulation. Finally, this rule would revise § 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 California Grape and Tree Fruit League (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 would make the minimum bunch size requirement one-quarter pound as defined in the standards for 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, handlers find it difficult to fit two larger (minimum one-half pound) grape bunches into the 500 gram clamshell. The recommended change would allow handlers to use smaller (minimum one-quarter pound) bunches to fill the smaller clamshell packages. This change would offer handlers greater flexibility in packaging and would allow them to pack a greater portion of the crop into the clamshell packages that are popular in the marketplace. The League believes this change would position 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” would be deleted, and the following countries would be added to the remaining list: Bosnia, Croatia, Czech Republic, Germany, Herzegovina, Macedonia, Montenegro, Serbia, and Slovenia. Such action would clarify 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.

### Initial 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 initial 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 can be assumed that an analysis of the effects of the proposed rule upon members of the California table grape industry would be 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 2008 was 724,000 tons, valued at \$461 per ton or \$333,764,000. Average receipts for California’s 550 producers would thus be approximately \$606,844, which is lower than the SBA threshold of \$750,000 for small producers. According to USDA’s Foreign Agricultural Service, 367,643 tons of fresh grapes, valued at \$608,757,000, were exported from the U.S. in 2008.

Assuming that 98 percent of exported grapes were produced in California, average 2008 receipts for California’s 75 shippers would have been \$7,954,425, 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 would be classified as small entities, and that the majority of shippers would 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 should be classified as small entities under SBA’s standards. No information regarding the receipts or size of U.S. table grape exporters and carriers is available.

This proposed rule is issued under authority of the Export Grape and Plum Act, as amended (7 U.S.C. 591–599). This rule would amend 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 would further revise § 35.11(a) by updating the list of European countries defined in the regulation. Finally, this rule would revise § 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 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 standards for U.S. Fancy Table grade would 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 would be outweighed by the advantage of presenting U.S. table grapes in packages most desirable in the retail market. The benefits of this action would 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 would remain in effect on a continuing basis, beginning with the 2011 season. These actions would 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 proposed rule would 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.

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.

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

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.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule should be in place prior to the 2011 harvesting season, which begins approximately May 1, 2011. All written comments timely received will be considered before a final determination is made on this matter.

#### 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 proposed to be 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: December 7, 2010.

**Craig Morris,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–31197 Filed 12–10–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Doc. No. AMS–FV–10–0084; FV10–916/917–3 CR]

#### Nectarines, Pears, and Peaches Grown in California; Continuance Referenda

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

**ACTION:** Referenda order.

**SUMMARY:** This document directs that referenda be conducted among eligible California nectarine, pear, and peach growers to determine whether they favor continuance of the marketing orders regulating the handling of nectarines, pears, and peaches grown in California.

**DATES:** The referenda will be conducted from January 12 through February 2, 2011. To vote in these referenda, growers must have produced nectarines, pears, or peaches in California during the period April 1, 2010, through November 30, 2010.

**ADDRESSES:** Copies of the marketing orders may be obtained from the California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, United States Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California 93721–3129, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or e-mail: [Jerry.Simmons@ams.usda.gov](mailto:Jerry.Simmons@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order Nos. 916 and 917 (7

CFR parts 916 and 917), hereinafter referred to as the “orders,” and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by growers. The referenda shall be conducted from January 12 through February 2, 2011, among eligible California nectarine, pear, and peach growers. Only growers that were engaged in the production of nectarines, pears, or peaches in California during the period of April 1, 2010, through November 30, 2010, may participate in the continuance referenda.

Although pears are included under the provisions of M.O. 917, those provisions have been suspended since April 1994. Since that time, the pear industry has been regulated by a State marketing order. If the results of the pear referendum do not favor continuance, the pear order will be terminated. Otherwise, this suspension will remain in effect unless the pear industry recommends reactivation or termination of the Federal program.

Referendum requirements for the most recent cycle of continuance referenda were suspended by USDA because the orders were being amended at the time (72 FR 12038, March 15, 2007). USDA determined that it would be appropriate to allow the amended orders to operate for a period of time before asking growers to vote on continuance of the programs. The referenda ordered herein will thus be the first conducted since the orders were amended in 2006 (71 FR 41345, July 21, 2006).

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider terminating the orders if fewer than two-thirds of the growers voting in the referenda or growers of less than two-thirds of the volume of California nectarines, pears, and peaches represented in the referenda favor continuance of their programs. In evaluating the merits of continuance versus termination, USDA will consider the results of the continuance referenda and all other relevant information regarding operation of the orders. USDA will evaluate the orders' relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the orders would tend to effectuate the declared policy of the Act.