

# Rules and Regulations

Federal Register

Vol. 61, No. 54

Tuesday, March 19, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Docket Number FV-94-301]

#### Table Grapes (European or Vinifera Type); Grade Standards

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the United States Standards for Grades of Table Grapes (European or Vinifera Type). This rule lowers the present minimum bunch size and provides a separate tolerance for off-size bunches for the U.S. No. 1 Institutional grade only. It also includes a technical update which would revise the reference to Arizona and California State maturity regulations.

**EFFECTIVE DATE:** April 18, 1996. The incorporation by reference of certain publications listed in the regulations has been approved by the Director of the Federal Register as of April 18, 1996.

**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 D.C. 20090-6456, (202) 720-2185.

**SUPPLEMENTARY INFORMATION:** The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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 substantial number of small entities. This final rule revising the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) 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.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed 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 United States Standards for Grades of Table Grapes (European or Vinifera Type) was revised in April 1991. This revision established a new grade, U.S. No. 1 Institutional. This grade—used in sales to restaurant and other food service concerns—provides for grape lots which have very small bunch sizes. In recent years, new marketing and packaging techniques have developed very small, individual consumer size servings of grapes. Under previous grade requirements these “single serving” type grape bunches were too small to meet any U.S. grade. Therefore, the Department developed, at the request of the table grape industry, a separate grade reflecting today's modern marketing and packaging methods for the growing food service market while preserving the integrity of the “regular” fresh pack grades for grapes sold to consumers in supermarkets and other retail outlets. Thus, grades for two different types of pack could be contained in one standard allowing the grades to share common characteristics while at the same time maintaining grades for two distinct types (packs) of table grapes.

This portion of the final rule concerns only the institutional pack and not the “regular” fresh pack grades. Growers and shippers of the institutional pack type table grape represented by the California Grape and Tree Fruit League (CGTFL) requested a revision to the

institutional grade only, to address a new market which is emerging that would utilize extremely small clusters and/or bunches of grapes. According to the CGTFL, these buyers typically want a smaller grouping of grapes than is allowed under the current two ounce minimum bunch size requirement in the institutional grade. As an example, certain restaurant chains presently garnish some of their plates with institutional pack grapes, but must cut the existing small bunches to even smaller clusters of grapes (as little as two berries to a cluster) to fit their particular needs. Changing this minimum bunch requirement on the U.S. No. 1 Institutional grade allows the industry to develop contract specifications and otherwise use the U.S. grade to satisfy that growing segment of the restaurant and food service industry market that utilizes grapes as a garnish.

A proposed rule was issued to address this change as well as other changes. Docket Number FV-94-301 was published in the Federal Register as a proposed rule on March 15, 1995, [Vol. 60, No. 50, Pages 13926-13928]. A comment period of sixty days was issued which closed on May 15, 1995.

A total of seven comments were received pertaining to this specific issue. Six of these comments, from growers/shippers, a receivers' trade association, and a growers' trade association, were in favor of the proposed change. A receiver commented against the proposed change but offered no other explanation other than “At this time I am pleased with the current situation.” AMS is of the view that the changes as concerning U.S. No. 1 Institutional, will more efficiently serve the industry which produces “institutional type” table grapes.

Therefore, this final rule changes Section 51.885 U.S. No. 1 Institutional to resemble Section 51.884 (the format for U.S. No. 1 Table), except for the elimination of straggleness requirements and trimming away of defective berries for bunches, by providing a lower size designation from the previous minimum of two ounces to the new minimum requirement of a two berry cluster. The opening paragraph of the institutional grade requirement section reads as follows: “‘U.S. No. 1 Institutional’ grapes must have no less than 95 percent of the containers in the lot

legibly marked 'Institutional Pack.' Further requirements for this grade include grapes which consist of clusters and/or bunches of well developed grapes of one variety, except when designated as assorted varieties, which are at least fairly well colored, uniform in appearance when so specified in connection with the grade, and which meet the following requirements:"

As mentioned above, the requirements will be the same as for U.S. No. 1 Table except paragraph (b)(1) "Not Straggly" and (g)(4) "Trimming away of defective berries" will be omitted. Also, paragraph (h)(2) includes size requirements for clusters and/or berries:

"(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."

The present Section 51.913, Metric Conversion Table, is redesignated Section 51.914 and a new Section 51.913 is added to define a cluster. Since grape bunches are normally thought of as a series of grapes attached to small lateral stems which are in turn attached to a common main stem, the term bunch does not seem entirely appropriate when referring to two berries which share a common point of attachment. Therefore, for the purpose of the U.S. No. 1 Institutional grade only, Section 51.913 shall define a cluster as "two or more berries sharing a common point of attachment."

In addition, Table Ia, Tolerances at Shipping Point for U.S. No. 1 Institutional Only, and Table IIa, Tolerances En Route or at Destination for U.S. No. 1 Institutional Only, would be added. The CGTFL requested that a separate tolerance of four percent be provided for offsize clusters or bunches to maintain the integrity of the grade in relation to size requirements. Presently, Tables I and II combine both the offsize and remaining grade requirements in one tolerance (eight percent for tolerances at shipping point, Table I, and 12 percent for tolerances en route or at destination, Table II). The corresponding new tables, Table Ia and IIa for U.S. No. 1 Institutional grade only, maintain an eight and twelve percent tolerance, respectively, for remaining grade requirements but include a separate tolerance of four percent for offsize clusters or bunches.

The proposed rule also included a technical change which is not associated with the request pertaining to the U.S. No. 1 Institutional grade. Presently, Sections 51.882 (i)(1)(ii) and 51.884 (i)(1)(i) make reference to

"Superior Seedless" as a varietal name. Representatives of Sunworld International, Inc., California, have argued that "Superior Seedless" is a registered trademark name and not the varietal name. "Sugraone" according to Sunworld, is the correct varietal name.

The intent of AMS in proposing to change the wording to reflect "sugraone" as the varietal name was to correct what at first appeared to be an incorrect reference in the text of these grade standards. However, after reviewing the comments pertaining to the proposed change and conducting further research on this question, AMS found that the varietal name issue is a complicated one involving a number of interests. The question concerning the appropriate varietal name for the grape has been ongoing for several years, and has been the subject of State proceedings.

AMS provides inspection and grading services and issues grade and quality standards for commodities such as grapes. The agency does not determine varietal names for such commodities. Therefore, based on the above, the proposal to change the name "Superior Seedless" to "Sugraone" is withdrawn.

A total of ten comments were received pertaining to this specific issue. Five comments from growers/shippers, receivers, and an European import/export company were in favor of changing the reference in the standard from Superior Seedless to Sugraone. Five comments from growers/shippers, and receivers were against making this change.

Therefore, AMS has decided that no changes will be made to the text when stating grade requirements for this particular variety at this time. Sections 51.882, 51.884, and 51.885 and any other references to this variety will remain unchanged from the present standard, using the term "Superior Seedless."

In a separate, third area, as a technical change the paragraphs incorporating text by reference to maturity requirements for grapes grown in Arizona and California have been revised. Specifically, Section 51.888 Maturity Requirements, has been revised to incorporate by reference the latest Arizona table grape maturity requirements. Therefore, it is no longer necessary to include each subsection of Arizona regulations within the standard. This change will result in deleting subsections (i), (ii)(A) through (E), and (iii). This incorporation by reference was approved by the Director of the Federal Register on August 25, 1995 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The latest reference to the Arizona standards became effective January 6, 1994. This results in two changes concerning procedure: 1.) The reference to Cardinals and Robins requiring at least 14.5 percent soluble solids is removed, and 2.) Instead of sampling the least mature grapes in any container for the maturity test, the least mature grapes in a contiguous area of the container shall be sampled.

In addition, Paragraph 2 of this section is being revised to reference the latest edition of the Administrative Code of California (February 28, 1992). There are no apparent procedure changes as a result of this change, however this does make the incorporation by reference current.

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

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

For reasons set forth in the preamble, 7 CFR Part 51 shall be amended as follows:

#### **PART 51—[AMENDED]**

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

Authority: 7 U.S.C. 1621–1627.

2. Section 51.885 is revised to read as follows:

#### **§ 51.885 U.S. No. 1 Institutional.**

"U.S. No. 1 Institutional" grapes must have no less than 95 percent of the containers in the lot legibly marked "Institutional Pack." Further requirements for this grade include grapes which consist of clusters and/or bunches of well developed grapes of one variety, except when designated as assorted varieties, which are at least fairly well colored, uniform in appearance when so specified in connection with the grade, and which meet the following requirements:

- (a) Basic requirements for berries:
  - (1) Mature;
  - (2) Firm;
  - (3) Firmly attached to capstem;
  - (4) Not weak;
  - (5) Not materially shriveled at capstem;
  - (6) Not shattered;
  - (7) Not split or crushed;
  - (8) Not wet.
- (b) Basic requirements for stems: Not weak, or dry and brittle.
- (c) Berries free from:
  - (1) Decay;
  - (2) Waterberry;
  - (3) Sunburn.
- (d) Stems free from:
  - (1) Mold;

- (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<sup>1</sup>  
[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<sup>1</sup>—Continued  
[Percent]

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

<sup>1</sup>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