

Rules and Regulations

Federal Register

Vol. 63, No. 4

Wednesday, January 7, 1998

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 925

[Docket No. FV98-925-2 IFR]

Grapes Grown in a Designated Area of Southeastern California; Revision to Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the container requirements currently prescribed under the California grape marketing order. The marketing order regulates the handling of grapes grown in a designated area of southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). This rule revises the dimensions of three containers currently authorized for use by grape handlers regulated under the marketing order, adds two new containers, and makes several conforming and formatting changes. This revision to container requirements will bring the container requirements into conformity with those recently adopted by the State of California, will address the marketing and shipping needs of the grape industry, is expected to improve returns for handlers and producers, and is in the interest of consumers.

DATES: Effective on January 8, 1998; comments must be received by March 9, 1998 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 sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202)

205-6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906, or George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR Part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the "order." The marketing 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 rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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.

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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule modifies language in § 925.304 of the order's rules and regulations by revising the dimensions of three containers currently authorized for use by grape handlers, by adding two containers, and by making several conforming and formatting changes. The revision to container requirements in § 925.304(b) will bring the container requirements into conformity with those recently adopted by the State of California, will address the marketing and shipping needs of the grape industry, is expected to improve returns for handlers and producers, and is in the interest of consumers. In addition, this rule also will change a California Department of Food and Agriculture (CDFA) reference from "California Administrative Code (Title 3)" to "Title 3: California Code of Regulations" (CCR) in paragraphs (a), (b), and (f) of § 925.304, will remove an incorrect CCR section number referenced in § 925.304(b), and add a new section number to that paragraph to conform with the State of California.

Section 925.52(a)(4) of the grape marketing order provides authority to regulate the size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's rules and regulations outlines container and pack requirements for grapes and requires such grapes to meet the requirements of sections 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3).

Currently, § 925.304(b)(1)(i) through (b)(1)(ix) of the order's rules and regulations authorize eight containers (28, 38J, 38K, 38Q, 38R, 38S, 38T, and a 5 kilo) for use by grape handlers, and also authorize the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3) and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Several years ago, the California Table Grape Commission (Commission) funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. Dr. Shorey looked at multiple varieties of grapes grown in California, packed in cartons of a wide variety of materials, dimensions, and packing depths. He monitored numerous shipments from the field to the grocery store. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48-x 40-inch pallets and that container minimum net weights should be reduced by 2 pounds.

Based on these conclusions, the Committee recommended and the Secretary approved in March 1996 (61 FR 11129, March 19, 1996) reducing the minimum net weight requirements, and adding the 38S and 38T containers to enhance the deliverability of grapes.

Since that time, the CDFA has published several amendments to the CCR which added the 38U and 38V containers. It is noted that the dimensions of the 38Q, 38R, and 38T authorized in § 925.304(b)(1)(iv), (v), and (vii) do not conform to those adopted by the State of California and they should. The comparisons below for these three containers are based on the State of California dimensions, not those specified in § 925.304(b).

The Committee met on November 12, 1997, and unanimously recommended modifying the language in § 925.304 of the order's administrative rules and regulations. The Committee recommended the following changes to Section 925.304(b):

(1) That the width of the 38Q container be decreased from 11½ inches (inside) to 11¼ inches (inside), and that the depth be decreased from 6¾ inches (inside) to 6¼ inches (inside);

(2) That the width of the 38R container be expanded from 15¾ inches (outside) to 15¾ to 16 inches (outside), and that the length be expanded from 19½ inches (outside) to 19½ to 20 inches (outside);

(3) That the depth of the 38T container be decreased from 6¾ to 7½ inches (inside), that the width be expanded from 13½ inches (outside) to 13½ to 13¾ inches (outside), and that the length be expanded from 15¾ inches (outside) to 15¾ to 16 inches (outside);

(4) That containers 38U and 38V, as defined in the CCR, be added to the regulations; and

(5) That several conforming and formatting changes be made to clarify which sections of the CCR pertain to grapes, and make the regulations more reader friendly. Specifically, reference to § 1380.19(14) needs to be removed because no such section exists. The incorrect section number was inadvertently placed in the regulation. The correct sections that apply to grapes are §§ 1380.14 and 1380.19(n). These sections need to be added to the regulation to make them consistent with the State of California's code. In addition, the authorized containers and dimensions are listed in chart form, rather than narrative form.

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. 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. 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 27 handlers of California grapes subject to regulation under the order and approximately 80 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. Ten of the 27 handlers subject to regulation have annual grape sales of at least \$5,000,000, excluding receipts from any other sources. In addition, 70 of the 80 producers subject to regulation have annual sales of at least \$500,000 and the remaining 10 producers have annual sales less than \$500,000, excluding receipts from any other sources. Therefore, a majority of

handlers and a minority of producers are classified as small entities.

This rule modifies language in § 925.304 of the order's rules and regulations by revising the dimensions of three containers currently authorized for use by grape handlers, by adding two containers, and by making several conforming and formatting changes. The revision to container requirements in § 925.304(b) will bring the container requirements into conformity with those recently adopted by the State of California, will address the marketing and shipping needs of the grape industry, is expected to improve returns for handlers and producers, and is in the interest of consumers. In addition, this rule will also change a California Department of Food and Agriculture (CDFA) reference from "California Administrative Code (Title 3)" to "Title 3: California Code of Regulations" (CCR) in paragraphs (a), (b), and (f) of § 925.304, will remove an incorrect CCR section number referenced in § 925.304(b), and add a new section number to that paragraph to conform with the State of California.

Section 925.52(a)(4) of the grape marketing order provides authority for size, capacity, weight, dimensions, markings, materials, and pack of containers which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's rules and regulations outlines container and pack requirements for grapes and requires such grapes to meet the requirements of sections 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3).

Currently, § 925.304(b)(1)(i) through (b)(1)(ix) of the order's rules and regulations authorize eight containers (28, 38J, 38K, 38Q, 38R, 38S, 38T, and a 5 kilo) for use by grape handlers, and also authorize the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3) and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Several years ago, the Commission funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural

Center at Parlier. Dr. Shorey looked at multiple varieties of grapes grown in California, packed in cartons of a wide variety of materials, dimensions, and packing depths. He monitored numerous shipments from the field to the grocery store. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48 x 40-inch pallets and that container minimum net weights should be reduced by 2 pounds.

Based on these conclusions, the Committee recommended and the Secretary approved reducing the minimum net weight requirements, and adding the 38S and 38T containers in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, the CDFA has published several amendments to the CCR which added the 38U and 38V containers. It is noted that the dimensions of the 38Q, 38R, and 38T authorized in § 925.304(b)(1)(iv), (v), and (vii) do not conform to those adopted by the State of California, and they should. The comparisons below for these three containers are based on the State of California dimensions, not those specified in § 925.304(b).

The Committee met on November 12, 1997, and unanimously recommended modifying the language in § 925.304 of the order's administrative rules and regulations. The Committee recommended the following changes to Section 925.304(b):

(1) That the width of the 38Q container be decreased from 11½ inches (inside) to 11¼ inches (inside), and that the depth be decreased from 6¾ inches (inside) to 6¼ inches (inside);

(2) That the width of the 38R container be expanded from 15¾ inches (outside) to 15¾ to 16 inches (outside), and that the length be expanded from 19½ inches (outside) to 19½ to 20 inches (outside);

(3) That the depth of the 38T container be decreased from 6⅝ to 7½ inches (inside), that the width be expanded from 13⅝ inches (outside) to 13⅝ to 13⅝ inches (outside), and that the length be expanded from 15⅝ inches (outside) to 15⅝ to 16 inches (outside);

(4) That containers 38U and 38V, as defined in the CCR, be added to the regulations; and

(5) That several administrative changes be made to clarify which sections of the CCR pertain to grapes. Specifically, § 1380.19(14) needs to be removed and §§ 1380.14 and 1380.19(n), need to be added.

Imported grapes will not be affected by this rule.

This rule needs to be effective by February 1998 as handlers will need to order lugs in preparation for the grape harvest which begins the end of April or early May.

At the meeting, the Committee discussed the impact of these revisions on handlers and producers in terms of cost. The new width and length dimensions for the 38R and 38T containers listed in the marketing order will fit within the dimensions for the new 38R and 38T containers as defined in the CCR. Therefore, handlers and producers will be able to continue using their current supply of 38R and 38T containers or purchase the new containers. This should have minimal impact on the industry as the cost for the new containers is expected to be less than the 38R and 38T containers utilized last fiscal period.

The 38Q container depth and width dimensions listed in the marketing order will not fit within the new depth and width dimensions for the new 38Q container as defined in the CCR. Therefore, handlers will need to utilize new containers. The Committee surveyed handlers and determined that none have stocks of 38Q containers. According to industry members, the new 38Q containers will cost handlers \$0.20 less per container. This cost savings will be passed on to producers.

The Committee estimates the 1998 crop will be approximately 8,000,000 lugs. It is estimated that 2 to 3% of the crop (160,000 to 240,000) lugs will be packed into 38Q containers. The Committee estimated that a minimal amount of grapes will be shipped in the new 38U and 38V containers this fiscal period, but determined that handlers should have these containers available for use.

The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this revision, including not revising the dimensions for the 38Q, 38R, and 38T containers and not adding the 38U and 38V containers, but determined that handlers and producers should benefit from this change. The new and revised containers, conform with California state requirements, which fit on the standard 48- x 40-inch pallet, will address the marketing and shipping needs of the grape industry, and will accommodate the reduced net weight requirements established by the industry in March 1996. Thus, the Committee members unanimously agreed that the 38Q, 38R, and 38T

container dimensions should be revised, that the 38V and 38U containers should be added to containers authorized under the marketing order, and that conforming and formatting changes should be made to reflect the appropriate sections of the CCR.

This action will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, the Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 12, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 12 members, of which 8 are handlers and producers, 1 is a producer only, and 2 are handlers only. The twelfth Committee member is the public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee'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.

Any comments received on this action will be considered prior to finalization of this rule.

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 grapes grown in designated areas of southeastern California; (2) California grape handlers are aware of this action which was unanimously recommended by the Committee at a public meeting, and they will need no additional time to comply with the relaxed requirements; (3) California grape shipments begin approximately

April 20, 1998, and this rule needs to be in effect by February so containers can be ordered in time for harvest and shipment; and (4) this rule provides a 60-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 part 925, the words “California Administrative Code (Title 3)” are removed and the words “Title 3: California Code of Regulations” are added in their place everywhere they appear.

3. In § 925.304:

(A) Paragraph (b)(1) introductory text is amended by removing the number

“1380.19(14)” and adding in its place the phrase “1380.14, and 1380.19(n)”, and

(B) Paragraphs (b)(1)(i) through (vii) are removed and paragraphs (b)(1)(viii) and (ix) are redesignated as paragraphs (b)(1)(ii) and (b)(1)(iii) and a new paragraph (b)(1)(i) is added to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(b) * * *

(1) * * *

(i)

CONTAINER DESCRIPTIONS IN INCHES

Container	Depth	Width	Length
28 Sawdust Pack	7¾ (inside)	14 ¹⁵ / ₁₆ (inside)	18 ⁵ / ₈ (inside).
38J Polystyrene Lug	6¾ (inside)	12½ (inside)	15¾ (inside).
38K Standard Grape	4½ to 8½ (inside)	13½ to 14½ (outside)	16 ⁵ / ₈ to 17½ (outside).
38Q Polystyrene Lug	6¼ to 8¼ (inside)	11¼ (inside)	18½ (inside).
38R Grape Lug	4 to 7 (inside)	15¾ to 16 (outside)	19 ¹ / ₁₆ to 20 (outside).
38S Grape Lug	5 to 9 (inside)	11 ¹ / ₁₆ to 12 (outside)	19 ¹ / ₁₆ to 20 (outside).
38T Grape Lug	5½ to 7½ (inside)	13 ¹ / ₈ to 13 ¹⁵ / ₁₆ (outside)	15 ⁵ / ₁₆ to 16 (outside).
38U Grape Lug	6¾ to 7 (inside)	13 ¹ / ₁₆ (outside)	20½ (outside).
38 V Grape Lug	5 ¾ (inside)	14 (outside)	16 (outside).

* * * * *

Dated: December 30, 1997.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–284 Filed 1–6–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–333–AD; Amendment 39–10272; AD 98–01–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to instruct the flightcrew to crosscheck certain primary power setting parameters of the Thrust Control Computer (TCC) against tables of these values; and apply corrective action, if

necessary. This amendment also provides for optional terminating action for the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to ensure that the flightcrew is provided with procedures for crosschecking and correcting certain primary power setting parameters of the TCC; incorrect parameters could result in insufficient thrust being applied during takeoff.

DATES: Effective January 22, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW.,

Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that, in three instances, incorrect primary power setting parameters [N1 rotor speed or engine pressure ratio (EPR)] have been observed on airplanes in service. These incorrect parameters have been attributed to inaccurate data computations by the Thrust Control Computer (TCC), due to electrical power transients occurring during the engine startup sequence. Incorrect primary power setting parameters in the TCC, if not corrected, could result in insufficient thrust being applied during takeoff.

Explanation of Relevant Service Information

Airbus has issued A300–600 Flight Manual Temporary Revisions 4.03.00/18 and 4.03.00/19; and A310 Flight Manual Temporary Revisions 4.03.00/20 and