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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 35

[FV-96-35-1IFR]

Regulations Issued Under the Export Grape and Plum Act; Exemption From Size Regulations for Black Corinth Grapes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule exempts the Black Corinth variety of grapes from the minimum bunch and berry size requirements issued for grapes under the Export Grape and Plum Act. This rule is designed to expand the markets for this variety of grapes and to increase their fresh utilization. This rule was recommended by the California Grape and Tree Fruit League after the proposal had been presented at industry meetings of growers and handlers.

DATES: Effective October 18, 1996; comments received by November 18, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; FAX: (202) 720-5698. All comments should reference the 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: Dennis L. West, Northwest Marketing

Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724 or FAX (503) 326-7440; or William R. Addington, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2412 or FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This 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." This rule amends "Regulations Issued Under Authority of the Export Grape and Plum Act" (7 Part 35).

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 rule has been reviewed under Executive Order 12778, 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.

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 action 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. In the United States there are approximately 250 handlers of table grapes that are subject to regulations under the authority of the Export Grape and Plum Act, and approximately 1300 grape producers. Small agricultural service firms, which include handlers of grapes, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of grape handlers and producers regulated under the Export Grape and Plum Act may be classified as small entities.

Section 35.11 of the "Regulations issued under authority of the Export

Grape and Plum Act" establishes minimum size and quality requirements for export shipments of any variety of vinifera species table grapes. Currently, such grapes being 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 (7 CFR part 51, §§ 51.880-51.992), except that the minimum bunch size shall be one-half pound. Table grapes shipped to countries other than Japan, Europe, Greenland, Canada, or Mexico must meet the requirements of U.S. No. 1 Table, except that the minimum bunch size shall be one-fourth pound. (Shipments to Canada and Mexico are currently not regulated under this part.) The U.S. Fancy Table grade includes a requirement for unlisted varieties (such as Black Corinth), that 90 percent of the berries, by count, in each bunch shall be at least ten-sixteenths of an inch in diameter. Similarly, the U.S. No. 1 Table grade includes a requirement for unlisted varieties (such as Black Corinth), that 75 percent of the berries, by count, shall be at least nine-sixteenths of an inch in diameter.

The Board of Directors of the California Grape and Tree Fruit League (Board), which represents a substantial portion of the fresh table grape industry, unanimously recommended that the Black Corinth variety of grapes be exempted from the minimum bunch and berry size requirements established for export shipments.

The Board advises that this change is needed because the Black Corinth variety (sometimes referred to as Zante Currants) are characteristically of high quality but of very small bunch and berry size. The small size prevents this variety from meeting the minimum size requirements established for export shipments.

Traditionally this variety of grapes had been dried for use as raisins. As oversupply conditions occurred in recent years for this variety, handlers within the industry were successful in developing fresh outlets. The variety received good consumer acceptance, primarily because of its unique size and sweetness.

Exempting the Black Corinth variety of grapes from the minimum bunch and berry size requirements for export shipments will enable handlers to further expand their markets and

increase fresh utilization. This change will improve the marketing of these varieties and increase returns to producers.

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities and that the action set forth will benefit producers and handlers of the Black Corinth variety of grapes. This action relaxes the requirements for small and large exporters exporting shipments of Black Corinth grapes by exempting that variety of grapes from the minimum bunch and berry size requirements.

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 the requirements for export shipments of Black Corinth grapes; (2) The Board unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) shipments of the Black Corinth variety of grapes have begun and this rule should apply to the entire season's shipments; (4) handlers and producers of the Black Corinth variety of grapes are aware of this rule and they need no additional time to comply with the relaxed requirements; and (5) this rule provides a 30-day comment period and any comments will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 35

Administrative practice and procedure, 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—REGULATIONS ISSUED UNDER AUTHORITY OF THE EXPORT GRAPE AND PLUM ACT

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

Authority: 7 U.S.C. 591–599.

2. In § 35.11, paragraphs (a) and (b) are amended by adding a sentence immediately following the existing text to read as follows:

§ 35.11 Minimum requirements.

* * * * *

(a) * * * The Black Corinth variety shall be exempt from bunch and berry size requirements.

(b) * * * The Black Corinth variety shall be exempt from bunch and berry size requirements.

* * * * *

Dated: October 10, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–26654 Filed 10–16–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 51

[Docket Number FV–95–306]

Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing inspection and certification for fresh fruits, vegetables and other products by increasing the fees charged for the inspection of these products at destination markets. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: November 10, 1996.

FOR FURTHER INFORMATION CONTACT: Robert J. Huttenlocker, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 2049 South Building, Washington, DC 20090–6456, (202) 720–0297.

SUPPLEMENTARY INFORMATION: 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.

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

There are more than 2,000 users of Fresh Products Branch's destination market grading services. Some of these are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This rule will raise the fees charged to businesses for voluntary inspection services for fresh fruits and vegetables. Even though fees will be raised, the increase is small (approximately five percent) and will not significantly affect these entities. These businesses are

under no obligation to use these inspection services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products.

The Agricultural Marketing Service (AMS), has certified that this action will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601). The final rule reflects certain fee increases needed to recover the costs of inspection services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMA authorizes official inspection, grading, and certification on a user-fee basis, of fresh fruits, vegetables, and other products such as raw nuts, Christmas trees, and flowers. The AMA provides that reasonable fees be collected from the user of the program services to cover, as nearly as practicable, the costs of services rendered. This final rule will amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Employee salaries and benefits are major program costs that account for approximately 86 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, has materially affected program costs. Another general and locality salary increase, ranging from 2.39 to 2.87 percent depending upon locality (amounting to approximately \$253,000), was effective January 1996. Further, since FY 94, the costs associated with the development of U.S. grade standards have been and will continue to be covered from user fee revenues (prior to this, these costs were funded by Federal appropriation). Standardization activities increase the cost of this program by approximately \$100,000 per year.

While a concerted effort to cut costs resulted in overhead savings of \$350,000 in FY 95 over FY 94, the last