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 51

[Docket Number FV–98–302]

Table Grapes (European or Vinifera Type); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Table Grapes (European or Vinifera Type). These standards are issued under the Agricultural Marketing Act of 1946. The proposal would change the specific varietal reference throughout the standard from the present ''Superior Seedless'' to ''Sugraone.'' This revision will result in a benefit to the table grape industry by providing a uniform, apropos reference ensuring proper application of the grade standards.

DATES: Comments must be received by December 21, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, DC 20090–6456; Fax (202) 720–8871; E-mail Francis—J.OSullivan@usda.gov. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: 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 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 the rule.

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. However, in 1995 the Agricultural Marketing Service (AMS) received a request from Sun World International, Inc. (Sunworld) to replace the varietal reference ''Superior Seedless'' with ''Sugraone'' in the table grape standards in 7 CFR Part 51.880—51.914. Sunworld, a grower/shipper with proprietary rights to the term ''Superior,'' advised AMS that ''Superior Seedless'' was a registered trademark name and not the varietal name for this table grape variety. ''Sugraone,'' according to Sunworld, was the correct varietal name. On March 15, 1995, therefore, when AMS issued a proposed rule (**Federal Register**, Vol. 60, No. 50, pp. 13889—14200) to change the bunch size requirements for the U.S. No. 1 Institutional grade, the agency also proposed to change the varietal name designation, assuming that this revision was purely a technical step to keep the standard consistent with current industry terminology.

In proposing to change the wording to reflect ''Sugraone'' as a varietal name AMS intended to correct what the agency understood to be an out-of-date reference in the 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 was a complicated one involving a number of interests.

Ten comments were received as a result of the March 19, 1996, proposal pertaining to this specific issue from growers, shippers, and/or receivers. Five comments were in favor of the proposed change, five were against the change. The comments in favor of the change stated that it would promote consistency in regard to international trade of the table grape. The comments in opposition were generally of the view that the change would create confusion in regard to international trade. Based on the comments, AMS withdrew the proposal to change the name ''Superior Seedless'' to ''Sugraone'' when the final rule was published (**Federal Register**, Vol. 61, No. 54, pp. 11125–11127) on March 19, 1996.

Sunworld believes that because of the current widespread use of ''Sugraone'' as the varietal name by the table grape industry, trade associations, and various government agencies, AMS should reconsider this decision. In support of its view, Sunworld argues: (1) As a result of a decision by the California Department of Food and Agriculture (CDFA)(No. L–9607066; August 9, 1996), the California table grape industry, which grows and ships the entire U.S. production of this variety, now uses the varietal reference ''Sugraone;'' (2) The proposal would eliminate any confusion in the use of the appropriate varietal name worldwide; (3) The proposed change furthers the objectives of the Uruguay Round Agreement by harmonizing the identity of the grape; and (4) By adopting the name ''Sugraone'' the U.S. would be consistent with terms used by most relevant international organizations. Additionally, Sunworld notes that as a result of the California State Administrative Hearing and resultant change to the California regulations, both buyers and sellers of table grapes now recognize ''Sugraone'' as the designated varietal name. For example, the Produce Marketing Association Electronic Identification Board has issued a Price Look-Up (PLU) number for the ''Sugraone'' variety of table grape.

AMS therefore proposes that sections 51.882, 51.884, and 51.885 of the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) be amended to change the varietal name to ''Sugraone.''

The actual grade requirements for this variety will remain unchanged. Accordingly, the proposed revision will have no substantive effect in the application of grade standards to regulated domestic and imported grapes under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674), specifically those at 7 CFR part 925, and 7 CFR part 944, or grapes regulated under the Export Grape and

Plum Act (7 U.S.C. 591–599). In addition, as the maturity requirements in the U.S. grade standards have been established by incorporating the applicable portions of the California Code of Regulations (Title 3, Subchapter 4, Fresh Fruits, Nuts and Vegetables, Article 25 Table Grapes and Raisins, February 28, 1992) and since California has revised these state regulations by replacing ''Superior Seedless'' with ''Sugraone,'' Section 51.888 (a)(2) of the U.S. standard will also be revised to incorporate by reference the new California regulations (The California Code of Regulations, Title 3, Subchapter 4, Fresh Fruits, Nuts, and Vegetables, Article 25 Table Grapes and Raisins, November 16, 1996).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities and AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

This rule will revise the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) that were issued under the Agricultural Marketing Act of 1946. Although, the regulations under Marketing Order No. 925 (7 CFR Part 925), as issued under the Agricultural Marketing Agreement Act of 1937, reference the U.S. standards for Grades of Table Grapes (European or Vinifera Type), the revision being proposed in this action changes only the varietal name appearing in the standards and has no substantive effect on the standards themselves or the marketing order. Specifically the grade, size, and maturity requirements of this marketing order are those listed in the U.S. standards, 7 CFR 51.884, this rulemaking leaves them unchanged. Similarly, as Section 8e of the Agricultural Marketing Agreement Act of 1937 requires, whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain specified commodities, the same or comparable regulations on imports of those commodities be issued, this proposed revision would apply to but have no practical effect upon imported grapes.

The U.S. Standards for Grade of Table Grapes (European or Vinifera Type) are also referenced in Export Grape and Plum Act and the regulations issued thereunder (7 CFR Part 35). The Export Grape and Plum Act was created to promote the foreign trade of the U.S. in grapes and plums, to protect the reputation of American-grown grapes and plums in foreign markets, to prevent deception of misrepresentation as to the quality of such products moving in foreign commerce, and to provide for the commercial inspection of such products entering such commerce and for other purposes. The regulations issued under the act require that any such variety for export to destinations in various countries throughout the world must meet the minimum requirement of either the U.S. Fancy Table or U.S. No. 1 Table grape grade. As, the proposed revision leaves those requirements unchanged, this rulemaking will have no effect on the application of the regulations for table grapes for export.

According to 1997 USDA National Agricultural Statistics Service reports, there are approximately 800 fresh market table grape growers/shippers in the United States which produced 939,665 short tons of table grapes (all varieties). Of these 800 growers/handlers, approximately 650 are from California and produce approximately 80 percent (750,000 short tons) of the crop. Approximately 10 growers from Arizona produced 2 percent (23,000 short tons) of the 1997 fresh market table grape crop. The bulk of the remaining 18 percent of production was produced by the remaining three of the top five States of table grape production: Georgia, Arkansas, and New York. In 1997, California produced approximately 26,572 short tons of the ''Sugraone'' variety, representing approximately 3 percent of the total U.S. table grape production and 100 percent of the U.S. production of this variety.

Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The table grape industry is characterized by growers and handlers whose farming operations generally involve more than one type (such as fresh market utilization versus processed market utilization) and variety of table grape, and whose income from farming operations is not exclusively dependent on one table grape variety or even one commodity. Typical table grape growers and shippers produce multiple varieties of fresh market table grapes and juice grapes within a single year. Therefore, it is difficult to obtain an exact number of table grape growers and, more specifically, sugraone table grape growers and shippers, that can be classified as small entities based on the SBA's definition. However, the majority of the producers do have annual receipts greater than $500,000. Additionally, there are approximately 127 importers that receive an average of $2.8 million in grape revenue. (Table grapes received by these importers are subject to the requirements of Section 8e of the Agricultural Marketing Agreement Act of 1937 referenced above.) Therefore, it is estimated that the majority of table grape growers do not fit the SBA's definition of a small entity while the majority of handlers/importers are small entities.

This rule changes the reference of ''Superior Seedless'' to ''Sugraone'' for the purpose of applying the appropriate grade standard requirements. The actual requirements for this variety will remain unchanged. Further, USDA does not determine or issue varietal names for table grapes. The changes being proposed are merely technical; the references are necessary to provide inspection personnel and other parties using the grade standards with clear, concise, up-to-date information. Specifically, in Sec. 51.882 U.S. Fancy, paragraph (i)(1)(ii), ''Superior Seedless'' will be changed to ''Sugraone.'' Accordingly, in Sec. 51.884 U.S. No. 1 Table, paragraph (i)(1)(i), which specifies berry size for the U.S. No. 1 Table grade, ''Superior Seedless'' will also be changed to ''Sugraone.'' A similar change will be made to Sec. 51.885 U.S. No. 1 Institutional, paragraph (h)(1)(i), which also references berry size for that particular grade.

Finally, as the maturity requirements specified in the standards incorporate applicable portions of The California Code of Regulations, and the State has revised these regulations by replacing ''Superior Seedless'' with ''Sugraone,'' Section 51.888 (a)(2) of the U.S. grade standards will be revised to incorporate the new state regulations by reference to The California Code of Regulations, Title 3, Subchapter 4, Fresh Fruits, Nuts, and Vegetables, Article 25 Table Grapes and Raisins, November 16, 1996.

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

Alternatives were considered for this action. One alternative would be to not issue a proposed rule. However, as the popularity of this variety increases, and as imports of this variety also increase,

the exposure and frequency of this varietal designation will also increase. Since the purpose of these standards is to expedite the marketing of agricultural commodities, not changing this reference could result in confusion in terms of the proper application of the U.S. grade standards.

This proposed action will make the standards more consistent and uniform with marketing trends and commodity characteristics. This proposed action will not impose any additional reporting or recordkeeping requirements on either small or large grape producers, handlers, or importers. In addition, other than discussed above, the Department has not identified any Federal rules that duplicate, overlap, or conflict with this rule. Accordingly, AMS proposes to amend the United States Standards for Grades of Table Grapes (European or Vinifera Type) as follows.

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 is proposed to 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.

§ 51.882 [Amended]

2. In part 51, § 51.882 (i)(1)(ii) is amended by removing the words ''Superior Seedless'' and adding in their place the word ''Sugraone.''

§ 51.884 [Amended]

3. Section 51.884 (i)(1)(i) is amended by removing the words ''Superior Seedless'' and adding in their place ''Sugraone.''

§ 51.885 [Amended]

4. Section 51.885 (h)(1)(i) is amended by removing the words ''Superior Seedless'' and adding in their place ''Sugraone.''

§ 51.888 [Amended]

5. In § 51.888, paragraph (a)(2), the words ''February 28, 1992'' are revised to read ''November 16, 1996.''

Dated: October 15, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–28238 Filed 10–20–98; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52 and 72

RIN 3150–AF94

Changes, Tests, and Experiments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations concerning the authority for licensees of production or utilization facilities, such as nuclear reactors, and independent spent fuel storage facilities, to make changes to the facility or procedures, or to conduct tests or experiments, without prior NRC approval. The proposed rule would clarify which changes, tests and experiments conducted at a licensed facility require evaluation, and the criteria that determine when NRC approval is needed before such changes to a licensed facility can be implemented. The proposed rule would also add definitions for terms that have been subject to differing interpretations, reorganize the rule language for clarity, and revise the criteria for when prior NRC approval is needed. The Commission is also seeking comment on several specific issues as discussed below.

DATES: Submit comments by December 21, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

FOR FURTHER INFORMATION CONTACT: Eileen McKenna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2189. (emm@nrc.gov) or Naiem Tanious, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–6103 (nst@nrc.gov).

SUPPLEMENTARY INFORMATION:

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II. Proposed Rule Topics and Issues
A. Organization of the rule requirements
B. Change to the facility as described in the Safety Analysis Report
C. Change to the procedures as described in the Safety Analysis Report
D. Tests and experiments not described in the Safety Analysis Report
E. Safety Analysis Report
F. Probability of occurrence or consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased
G. More than a minimal increase in probability or consequences
H. Possibility of an accident of a different type from any previously evaluated in the Safety Analysis Report may be created
I. Possibility of a malfunction of a different type from any previously evaluated in the Safety Analysis Report may be created
J. Margin of safety as defined in the basis for any technical specification is Reduced
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I. Background

The existing requirements governing the authority of production and utilization facility licensees to make changes to their facilities and procedures, or to conduct tests or experiments, without prior NRC approval are contained in 10 CFR 50.59. (Comparable provisions exist in 10 CFR 72.48 for licensees of facilities for the independent storage of spent nuclear fuel and high-level radioactive waste. This proposed rulemaking affects the requirements for 10 CFR parts 50, 52 and 72; for simplicity, the discussion will focus primarily on the language in 10 CFR 50.59). These regulations provide that licensees may make changes to the facility or procedures as described in the safety analysis report, or conduct tests or experiments not described in the safety analysis report, without prior Commission approval, unless the proposed change, test or experiment involves a change to the Technical Specifications incorporated in the license or an unreviewed safety