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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 33

[Docket No. FV-96-33-1 IFR]

Regulations Issued Under the Export Apple and Pear Act; Relaxation of Grade Requirements for Apples and Pears Shipped to Pacific Ports of Russia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document relaxes the minimum grade requirements issued under the Export Apple and Pear Act for U.S.-grown apples and pears shipped to Pacific ports of Russia. Container marking provisions also are relaxed for such shipments. These changes are designed to develop Eastern Russia as an export market for apples and pears. This rule was recommended by the Northwest Horticultural Council (Council), an organization representing the Northwest fruit industry.

DATES: Effective September 27, 1996. Comments must be received by October 28, 1996.

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 Division, AMS, USDA, Room 2525-S, PO Box 96456, Washington, DC 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, Marketing Specialist, 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, Fax # (503) 326-7440; or William R. Addington, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2412, Fax # (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under authority of the Export Apple and Pear Act, as amended, (7 U.S.C. 581-590), hereinafter referred to as the "Act." This rule will amend "Regulations Issued Under Authority of the Export Apple and Pear Act" (7 CFR part 33).

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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to 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. 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.

The Act and regulations effective thereunder apply to exporters and export carriers of apples and pears. In the United States, there are approximately 450 firms which pack and export apples and 300 firms which pack and export pears that are potentially subject to regulations under

the authority of the Act. Small agricultural service firms, which include firms that pack and export apples and pears, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000. The majority of apple and pear exporters regulated under the Act may be classified as small entities. This interim final rule invites comments on changes to the regulations currently issued under the Act. This rule relaxes the minimum grade requirements issued under the Act for U.S.-grown apples and pears only shipped to Pacific ports of Russia. Container marking provisions also are relaxed for such shipments. This rule will provide all exporters additional flexibility in marketing apples and pears of different grades and quality in Russian port cities and areas along the Pacific Ocean. These changes are designed to develop export markets for apples and pears in these areas. This rule does not preclude shipments of apples and pears of higher than the minimum quality from being shipped to Russian Pacific ports. This should benefit both large and small exporters of apples and pears. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Section 33.10 of the "Regulations Issued Under Authority of the Export Apple and Pear Act" establishes minimum grade and container marking requirements for export shipments of apples and pears. Currently, export shipments of apples must meet a minimum grade of U.S. No. 1 or U.S. No. 1 Early as specified in the United States Standards for Apples (7 CFR part 51, §§ 51.300-51.323). Exports of summer and fall pears must meet a minimum grade of U.S. No. 2 as specified in the United States Standards for Summer and Fall Pears (7 CFR part 51, §§ 51.1260-51.1280). Exports of winter pears also must meet the minimum grade of U.S. No. 2 as specified in the United States Standards for Winter Pears (7 CFR part 51, §§ 51.1300-51.1323). Additional restrictions for apple maggot and San Jose scale apply to both apples and pears.

This rule reduces the minimum grade requirements as follows.

The minimum grade for fresh apples exported to Russian Pacific ports is reduced to U.S. Utility grade (7 CFR part 51, § 51.303) or U.S. No. 1 Hail (7 CFR part 51, § 51.302(b)) for apples damaged by hail.

The minimum requirements for summer and fall pears exported to Russian Pacific ports are listed in the regulatory text of this regulation. The requirements provide that the pears should be of one variety that are mature, hand picked, clean, sound and free from hard-end; and free from serious damage caused by broken skin, insects, disease, hail marks, limbrubs, heavy russet, or other means; and shall not be so excessively elongated or flattened as to preclude the cutting of one good half. The requirements also include necessary definitions and explanations of some provisions and a list of tolerances which are applied to each lot at the time of packing.

Finally, the minimum requirements for winter pears exported to Russian Pacific ports also are listed in the regulatory text of this regulation. The requirements provide that the pears be of one variety which are mature, hand picked, clean, sound, not very seriously misshapen, free from black end, free from damage caused by hard end, broken skins, and free from serious damage caused by cork spot or bruises. "Very seriously misshapen" means that the pear is excessively flattened, elongated for the variety, or is constricted or deformed so it will not cut one good half or two fairly uniform quarters. The requirements also include necessary definitions and explanations of some provisions and a list of tolerances which are applied to each lot at the time of packing.

Handlers may ship apples and pears of higher grade quality than the minimum requirements established in this regulation.

Paragraph (d)(3) of § 33.10 Minimum requirements of the implementing regulations provides that each package of apples and pears be marked plainly and conspicuously with the name of the U.S. grade or the name of a State grade applicable to the product being exported. However, the new minimum requirement for pears is not equivalent to a U.S. grade, as required by paragraph (d)(3) and, thus, cannot be marked on containers. Therefore the Department has determined that the marking requirements of paragraph (d)(3) should not apply to shipments of pears shipped to Pacific ports of Russia meeting minimum quality requirements. This regulation adds a proviso to paragraph

(d)(3). Apples shipped according to the minimum grade standard in this regulation are not exempt from the grade marking provisions and must be properly marked pursuant to paragraph (d).

The additional restrictions for apple maggot and San Jose scale continue to apply to apples and pears shipped to any foreign destination.

The Council, an organization that represents a substantial portion of the fruit industry in the Northwest States of Oregon, Washington, and Idaho, recommended these changes in the current export regulations.

The Council advises that a change in requirements is needed to develop export markets for apples and pears to Pacific ports of Russia. According to the Council, exporters indicate that there is a demand in this relatively new export market of Eastern Russia for apples and pears of a lower grade than the current requirements allow. This change is expected to increase sales opportunities in a market willing to accept apples and pears that are lower in overall quality and less uniform in appearance than most export markets will accept.

The Council reports that weather and growing conditions are expected to adversely affect the appearance and quality of a significant portion of the 1996 pear crop. The Council believes this change will facilitate market development efforts for apples and pears to Pacific ports of Russia. Apples and pears which are not shipped for fresh consumption in either domestic or foreign markets are usually disposed of in processing outlets, such as juice. Processing outlets are not normally as profitable as fresh market outlets.

The Council and other industry groups conduct periodic meetings and consider recommendations for modification, suspension, or termination of the regulatory requirements under the Act. These meetings are open to the public, and interested persons are given an opportunity to express their views. The Department reviews recommendations and information submitted by these and other industry groups as well as other available information and determines whether such modification, suspension, or termination of the regulatory requirements would tend to effectuate the purposes of the Act.

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

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 the rule until 30 days after publication in the Federal Register because: (1) This rule relaxes the current grade requirements for apples and pears shipped to Pacific ports of Russia; (2) exporters have indicated that sales opportunities exist in Eastern Russia and that they would like to take advantage of these opportunities as soon as possible; (3) apples and pears are shipped throughout the year, and this rule should be in effect promptly so exporters can make marketing plans; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 33

Administrative practice and procedure, Exports, Apples, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 33 is amended as follows:

PART 33—EXPORT APPLES AND PEARS

1. The authority citation for 7 CFR part 33 continues to read as follows:

Authority: Sec. 7, 48 Stat. 124; 7 U.S.C. 587.

2. In § 33.10, paragraph (a), (b), and (d) are revised to read as follows:

§ 33.10 Minimum requirements.

* * * * *

(a) Apples grade at least U.S. No. 1 or U.S. No. 1 Early: *Provided*, That apples for export to Pacific ports of Russia shall grade at least U.S. Utility or U.S. No. 1 Hail for hail-damaged apples, as specified in the United States Standards for Apples (§§ 51.300–51.323 of this chapter): *Provided further*, That apples for export to any foreign destination do not contain apple maggot, and do not have more than 2 percent, by count, of apples with apple maggot injury, nor more than 2 percent, by count, of apples infested with San Jose scale or scale of similar appearance;

(b) Pears grade at least U.S. No. 2 as specified in the United States Standards for Summer and Fall Pears, such as Bartlett, Hardy, and other similar varieties (§§ 51.1260–51.1280 of this chapter), or in the United States Standards for Winter Pears, such as Anjou, Bosc, Comice, and other similar

varieties (§§ 51.1300–51.1323 of this chapter), do not contain apple maggot, and do not have more than 2 percent, by count, of apples with apple maggot injury, nor more than 2 percent, by count, of apples infested with San Jose scale or scale of similar appearance:

Provided, That the minimum quality requirements for pears exported to Pacific ports of Russia are as follows:

(1) Summer and fall pears shall be of one variety which are mature, hand picked, clean, sound and free from hard-end; and free from serious damage caused by broken skin, insects, disease, hail marks, limbrubs, heavy russet, or other means; and shall not be so excessively elongated or flattened as to preclude the cutting of one good half. Broken skin must not exceed 1/4 inch in diameter. The following definitions shall apply to all varieties:

Clean means reasonably free from dust, dirt, or honey dew.

Free from serious damage means defects when taken singly or collectively shall not seriously affect the edible or culinary value of the fruit.

Hand picked means that pears do not show evidence of rough handling or of having been on the ground.

Hard-end means pears which show an abnormally yellow or green color at the blossom end or an abnormally smooth rounded base with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody. Pears affected by hard-end shall be considered defects. Rat-tail shaped pears, or second bloom pears that are tough or ridged shall be considered defects. At the time of packing, not more than 10 percent, by count, of any lot may be below the requirements of the grade, and not more than one-tenth of this amount shall be allowed for decay and/or breakdown. Slight imperfections which are not discernible in good commercial sorting practice shall not be considered as defects. Small inconspicuous skin breaks of less than 1/8 inch in diameter or depth shall not be considered as damage, and not more than 15 percent of the pears in any container may have not more than one skin break from 1/8 inch to 3/16 inch, inclusive, in diameter or depth. After pears have been placed in storage, or in transit; scald, breakdown, decay, bitter pit, or physical injury affecting keeping quality, which may have developed or may only have become evident after pears are packed, are defined as applying to condition rather than to grade. Pears also shall not contain apple maggot, and shall not have more than 2 percent, by count, of pears with apple maggot injury, nor more than 2 percent, by count, of pears

infested with San Jose scale or scale of similar appearance;

Mature means having reached the stage of maturity which will insure a proper completion of the ripening process. Firmness of the flesh shall be considered only in connection with other factors to determine the degree of maturity. *Sound* means that pears at time of packing are free from visible defects such as decay, breakdown, scald, bitter pit, or physical injury affecting keeping quality. The following conditions shall not be considered serious damage: healed insect depressions or other surface blemishes which do not prevent the cutting of one good half;

(2) Winter pears shall be of one variety which are mature, hand picked, clean, sound, not very seriously misshapen, free from black end, free from damage caused by hard end, broken skins, and from serious damage caused by cork spot or bruises. The following definitions shall apply to all varieties:

Black end is evidenced by an abnormally deep green color around the calyx, or black spots usually occurring on one-third of the surface nearest to the calyx, or by an abnormally shallow calyx cavity.

Clean means free from excessive dirt, dust, spray residue, or other foreign material.

Damage by hard end means any injury or defect which materially affects the appearance, edible or shipping quality. Any pear with one skin break larger than 3/16 inch in diameter or depth, or with more than one skin break 1/8 inch or larger in diameter or depth, shall be considered damaged, and scored against the grade tolerance.

Handpicked means that the pears do not show evidence of having been on the ground.

Hard end is an abnormal yellow color at the blossom end, or an abnormally smooth, rounded base with little or no depression at the calyx, or if the flesh near the calyx is abnormally dry and tough or woody.

Mature means that the pear has reached the stage of maturity which will insure the proper completion of the ripening process.

Overripe means dead ripe, very mealy or soft, past commercial utility.

Serious damage by cork spot is when more than two cork spots are visible externally, or when the visible external injury affects an aggregate area of more than 1/2 inch in diameter. *Serious damage by bruising* is bruising which seriously affects the appearance, edible or shipping quality. For a tolerance of 10 percent or more, individual packages

in any lot may contain not more than one and one-half times the tolerance specified, except that when the package contains 15 specimens or less, individual packages may contain not more than double the tolerance specified. For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified, provided at least one specimen which does not meet the requirements shall be allowed in any one package. Pears also shall not contain apple maggot, and shall not have more than 2 percent, by count, of pears with apple maggot injury, nor more than 2 percent, by count, of pears infested with San Jose scale or scale of similar appearance;

* * * * *

(d) Each package of apples or pears is marked plainly and conspicuously with:

(1) the name and address of the grower, packer, or domestic distributor: *Provided*, That the name of the foreign distributor may be placed on consumer unit packages shipped in a master container if such master container is marked with the name and address of the grower, packer, or domestic distributor;

(2) the variety of the apples or pears;

(3) the name of the U.S. grade or the name of a state grade if the fruit meets each minimum requirement of a U.S. grade specified in this section; and *Provided further*, That the marking requirements of this paragraph shall not apply to pears meeting minimum quality requirements of this section and shipped to Pacific ports of Russia.

Dated: September 20, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-24663 Filed 9-25-96; 8:45 am]

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Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560-AE47

1996 Marketing Quota and Price Support for Burley Tobacco

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1996 crop of burley tobacco. The Secretary determined the