

Rules and Regulations

Federal Register

Vol. 71, No. 234

Wednesday, December 6, 2006

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 33

[Docket No. FV-00-33-1 FR]

Regulations Issued Under the Export Apple Act; Removal of Pear Regulations From the Export Regulations for Apples and Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises export regulations issued under the Export Apple and Pear Act (now renamed as the Export Apple Act) to reflect an amendment to that Act. The amendment limits the applicability of the Act to apple exports and removes all references to pears. Accordingly, the provisions applicable to pears are removed from the regulations.

DATES: *Effective Date:* December 7, 2006.

FOR FURTHER INFORMATION CONTACT:

Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone number (301) 734-5243, fax number (301) 734-5275, or e-mail address: Kenneth.Johnson@usda.gov.

Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237, telephone number (202) 720-2491, fax number (202) 720-2491, or e-mail address: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule revises export quality container, pack,

and inspection regulations (7 CFR part 33) issued under authority of the Export Apple and Pear Act (Act), as amended, [7 U.S.C. 581 *et seq.*]. The Act was renamed as the Export Apple Act, and amended to limit the applicability of the Act to apple exports and removed all references to pears. The Act was enacted November 12, 1999. This rule revises the regulations to reflect the fact that pears are no longer regulated as part of the Act.

In the past, the Act provided for the issuance of quality, container, container marking, and pack requirements for exports of apples and pears. The intent of the Act was to assure the quality of exported apples and pears, and to standardize the containers, container markings, and packs used by exporters.

This rule revises the regulations to remove all of the provisions related to quality, container, container marking, and pack applicable to pears to be consistent with the amended Act. Pear exporters would no longer be required to meet these requirements under the amended Act.

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.

The Act promoted the foreign trade of U.S.-grown apples and pears by authorizing the implementation of regulations with minimum quality, container, container marking, and inspection requirements. The regulated entities are packers, exporters, and carriers of these fruits.

In the 1990's, the U.S. pear industry sought greater flexibility in selling pears to developing export markets. Pear producers, handlers, and officials representing firms packing and exporting pears from the States Washington, Oregon, and California, which account for virtually all U.S. pear exports, petitioned Congress to remove provisions concerning pears from the Act. Congress voted in support of the removal, and on November 12, 1999, Public Law 106-96 was signed into law, amending and renaming the Act as the Export Apple Act.

This action is necessary to remove the provisions relating to pears from the export regulations in 7 CFR part 33, and make them consistent with the export Apple Act.

Final Regulatory Flexibility Analysis

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. Accordingly, AMS has prepared this final 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.

Small agricultural service firms, which include firms that pack and export apples and pears, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,500,000. In the United States, there are approximately 450 firms that pack and export apples that are potentially subject to regulations under the authority of the Act. The majority of apple exporters regulated under the Act may be classified as small entities.

USDA's Foreign Agricultural Service reports U.S. pear exports of 154,324 tons for the 2005/06 season. This is 5 percent below the 2004/05 pear export volume of 163,784 tons. The smaller 2005/2006 pear export crop, higher prices, rising imports and weak demand from key U.S. trading partners contributed to the reduction in U.S. pear exports in 2005/2006.

There are approximately 100 pear shippers with exporting capabilities in Washington, Oregon and California. A small number of exporters also ship pears from Michigan, New York, and Pennsylvania. U.S. pears were exported to over 30 countries in 2005/06, with the largest volumes going to Mexico, Canada, Brazil, Russia, and Columbia. Other export markets include New Zealand, India, Saudi Arabia, the United Arab Emirates, and Venezuela.

The U.S. pear industry has become increasingly dependent on foreign markets. Thus, it is essential that the regulations governing the industry provide the packers and exporters with the means of effectively competing in those markets. Pear producers, handlers, and officials representing firms that pack and export pears from the States of

Washington, Oregon, and California, which account for virtually all U.S. pear exports, petitioned Congress to remove pears from the Act.

The proponents to remove pears from the Act believe that private contractual arrangements between buyers and sellers control the quality of U.S. pear exports, and that mandatory Federal grade, size, quality, pack, container, and inspection requirements are no longer needed to assure the quality and condition of exported pears, and to assure that the pears are properly packed.

The quality of pears demanded by most buyers in current export markets is higher than the minimum standards that were implemented under the enabling legislation. However, opportunities for the sale of lower quality fresh pears have arisen in recent years. Some export markets desire pears having external defects and blemishes, such as hail marks, which are of good eating quality.

The pear industry believes that pear export markets can be better maintained, and expanded, by terminating the pear provisions and providing the U.S. pear industry greater flexibility in responding to international market needs. Prior to the removal of the pear regulations, packers and exporters of U.S. fresh pears have not been able to meet the demand for lower grade pears in other countries without changes to the export regulations made by the Department through informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553).

Each of the major producing States have minimum quality and inspection requirements for outgoing pear shipments, and these requirements will continue to apply. Washington has minimum grade requirements, and both Oregon and California have minimum requirements for maturity and grade defects. In addition, one Federal marketing order for pears (7 CFR part 927) produced in Oregon and Washington offer the opportunity for pear growers and handlers in those States to implement minimum requirements for fresh pear exports.

The regulation changes are expected to provide the U.S. pear industry with more flexibility in meeting buyer needs in international markets. The U.S. pear industry expects to be able to meet those needs more promptly with the removal of the pear regulations from the Act.

In making this amendment, USDA is implementing Public Law 106-96. Thus, no alternatives were considered by USDA. The recordkeeping requirements have been approved by the Office of

Management and Budget (OMB) under OMB No. 0581-0143; Export Fruit Acts.

This action will not impose any additional reporting or recordkeeping requirements on either small or large apple or pear exporters. As with all Federal regulatory programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Further, given the provisions of the Export Apple Act, it is found and determined upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this rule until 30 days after publication in the **Federal Register**. The export pear regulations have not been applied since November 12, 1999.

List of Subjects in 7 CFR Part 33

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

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

PART 33—REGULATIONS ISSUED UNDER AUTHORITY OF THE EXPORT APPLE ACT

■ 1. 7 CFR part 33 is revised to read as follows:

PART 33—REGULATIONS ISSUED UNDER AUTHORITY OF THE EXPORT APPLE ACT

Definitions

- Sec.
33.1 Act.
33.2 Person.
33.3 Secretary.
33.4 Carrier.
33.5 Apples.
33.6 Package.
33.7 Less than carload lot.

Regulations

- 33.10 Minimum requirements.
33.11 Inspection and certification.

Exemptions

- 33.12 Apples not subject to regulations.

Withholding Certificates

- 33.13 Notice.
33.14 Opportunity for hearing.
33.15 Suspension of inspection.
33.16 Service of notice or order.

Interpretive Rules

- 33.50 Apples for processing.
33.60 OMB control number assigned pursuant to the Paperwork Reduction Act.

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

Definitions

§ 33.1 Act.

Act and Export Apple Act are synonymous and mean "An act to promote the foreign trade of the United States in apples to protect the reputation of American-grown apples in foreign markets, to prevent deception or misrepresentation as to the quality of such products moving to foreign commerce, to provide for the commercial inspection of such products entering such commerce, and for other purposes," approved June 10, 1933 (48 Stat. 123; 7 U.S.C. 581 *et seq.*), and amended November 12, 1999 (113 Stat. 1321; 7 U.S.C. 581 *et seq.*).

§ 33.2 Person.

Person means an individual, partnership, association, corporation, or any other business unit.

§ 33.3 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

§ 33.4 Carrier.

Carrier means any common or private carrier, including, but not limited to trucks, railroads, airplanes, vessels, tramp or chartered steamers whether carrying for hire or otherwise.

§ 33.5 Apples.

Apples mean fresh whole apples in packages whether or not they have been in storage.

§ 33.6 Package.

Package means any container of apples.

§ 33.7 Less than carload lot.

Less than carload lot means a quantity of apples in packages not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent.

Regulations

§ 33.10 Minimum requirements.

No person shall ship, or offer for shipment, and no carrier shall transport, or receive for transportation, any shipment of apples to any foreign destination unless:

(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 (Sections 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) Decay, scald or any other deterioration which may have developed on apples after they have been in storage or transit shall be considered as affecting condition and not the grade.

(c) Each package of apples is packed so that the apples in the top layer shall be reasonably representative in size, color, and quality of the contents of the package; and

(d) Each package of apples 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;

(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.

§ 33.11 Inspection and certification.

(a) Each person shipping, or offering for shipment, apples to any foreign destination shall cause them to be inspected by the Federal or Federal-State Inspection Service in accordance with regulations governing the inspection and certification of fresh fruits, and vegetables and other products (Part 51 of this chapter) and certified as meeting the requirements of the Act and this part. No carrier shall transport, or receive for transportation, apples to any foreign destination unless they have been so inspected and certified. Inspection and certification may be obtained at any time prior to exportation of the apples. Such a

Federal or Federal-State certificate shall be designated as an “Export Form Certificate” and shall include the following statement: “Meets requirements of Export Apple Act.” The shipper shall deliver a copy of the Export Form Certificate or Memorandum of Inspection to the export carrier. Whenever apples are inspected and certified at any other point other than the port of exportation, the shipper shall deliver a copy of the Export Form Certificate or Memorandum of Inspection to the agent of the first carrier that thereafter transports such apples and such agent shall deliver such copy to the proper official of the carrier on which the apples, covered by such certificate or memorandum, are to be exported. A copy of the Export Form Certificate or Memorandum of Inspection shall be filed by the export carrier for a period of not less than three (3) years after date of export.

(b) If the inspector has reason to believe that samples of a lot of apples have been obtained for a determination as to compliance with tolerance for spray residue, established under the Federal Food, Drug and Cosmetic Act, as amended (52 Stat. 1040; U.S.C. 301 *et seq.*), he shall not issue a certificate on the lot unless it complies with such tolerances.

Exemptions

§ 33.12 Apples not subject to regulation.

Except as otherwise provided in this section, any person may, without regard to the provisions of this part, ship or offer for shipment, and any carrier may, without regard to the provisions of this part, transport or receive for transportation to any foreign destination:

(a) A quantity of apples to any foreign country not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples packed in standard boxes on a single conveyance;

(b) Apples to Pacific ports west of the International Date Line which do not meet maturity standards of the grade specified in § 33.10, if the packages are conspicuously marked or printed with the words “Immature Fruit;” (in letters at least two inches high) if inspected and certified as meeting all other requirements of §§ 33.10 and 33.11.

(c) Apples for processing which do not meet the grade standards specified in § 33.10, if such apples grade at least U.S. No. 1 as specified in U.S. Standards for Apples for Processing (§§ 51.340 to 51.344 of this chapter), and if the containers are conspicuously marked “Cannery” (in letters at least two inches

high) if inspected and certified as meeting all other requirements of §§ 33.10 and 33.11.

Withholding Certificates

§ 33.13 Notice.

If the Secretary is considering withholding the issuance of certificates under the Act for a period of not exceeding 90 days to any person who ships, or offers for shipment, apples to any foreign destination in violation of any provisions of the Act or this part, he or she shall cause notice to be given to the person accused of the nature of the charges against him or her and of the specific instances in which violation of the Act or the regulations in this part is charged.

§ 33.14 Opportunity for hearing.

The person accused shall be entitled to a hearing, provided he or she makes written requests therefore and files a written responsive answer to the charges made not later than 10 days after service of such notice on him or her. The right to hearing shall be restricted to matters in issue. At such hearing, he or she shall have the right to be present in person or by counsel and to submit evidence and argument in his or her behalf. Failure to request a hearing within the specified time or failure to appear at the hearing when scheduled shall be deemed a waiver of the right to hearing. Such person may, in lieu of requesting an oral hearing, file a sworn written statement with the Secretary not later than 10 days after service of such notice upon him or her.

§ 33.15 Suspension of inspection.

Any order to withhold the issuance of a certificate, as provided in section 6 of the Act, will be effective from the date specified in the order but no earlier than the date of its service upon the person found to have been guilty. Such order will state the inclusive dates during which it is to remain in effect, and during this period no inspector employed or licensed by the Secretary shall issue any Export Form Certificate or Memorandum of Inspection to such person.

§ 33.16 Service of notice or order.

Service of any notice or order required by the Act or prescribed by the regulations in this part shall be deemed sufficient if made personally upon the person served, by registered mail, or by leaving a copy of such notice or order with an employee or agent at such person’s usual place of business or abode or with any member of his immediate family at his or her place of abode. If the person named is a

partnership, association, or corporation, service may similarly be made by service on any member of the partnership or any officer, employee, or agent of the association or corporation.

Interpretive Rules

§ 33.50 Apples for processing.

The terms “apples for processing” as used in § 33.12 of this part apply only and is restricted to packages of apples which were originally packaged for processing and marked “Cannery” as required by § 33.12(c) of this part. Packages of apples not so originally packaged and marked are not eligible for certification as “apples for processing” for purposes of this part.

§ 33.60 OMB control number assigned pursuant to the Paperwork Reduction Act.

The OMB control number assigned pursuant to the Paperwork Reduction Act for this part is OMB No. 0581-0143.

Dated: December 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6-20659 Filed 12-5-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV06-981-2 C]

Almonds Grown in California; Changes to Incoming Quality Control Requirements; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service (AMS) published in the **Federal Register** on November 8, 2006, a document concerning quality control requirements under the California almond marketing order. Language was inadvertently omitted in the regulatory text to specify that the changes apply to all almonds received by handlers beginning August 1, 2006.

DATES: *Effective Date:* December 6, 2006.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Assistant Regional Manager, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, telephone: (559) 487-5901, Fax: (559) 487-5906, or e-mail: Maureen.Pello@usda.gov, or Kurt.Kimmel@usda.gov.

SUPPLEMENTARY INFORMATION: The AMS published a document in the **Federal Register** on November 8, 2006 (71 FR 65373) that inadvertently omitted language in the regulatory text to indicate that the changes apply to all almonds received by handlers beginning August 1, 2006. This document corrects the regulatory text.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 981 is corrected by making the following correcting amendments:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601-674

■ 2. In § 981.442 revise the first sentence of paragraph (a)(4)(i) and the 11th sentence in paragraph (a)(5) to read as follows:

§ 981.442 Quality Control.

(a) * * *

(4) *Disposition obligation.* (i)

Beginning August 1, 2006, the weight of inedible kernels in excess of 0.50 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. * * *

(5) * * * Beginning August 1, 2006, at least 50 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided*, That this 50 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. * * *

Dated: December 1, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06-9545 Filed 12-1-06; 2:50 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM360; Special Conditions No. 25-337-SC]

Special Conditions: Learjet 25, 25A, 25B, 25C, 25D, and 25F Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: The FAA issues these special conditions for Learjet 25, 25A, 25B, 25C, 25D, and 25F airplanes modified by Envoy Aerospace, LLC. These modified airplanes will have novel or unusual design features when compared with the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification consists of installing Universal Avionics EFI-890 Electronic Flight Displays and Rockwell Collins AHS-1000A Attitude Heading Reference Systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for protecting these systems from effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date for these special conditions is November 13, 2006. We must receive your comments on or before January 5, 2007.

ADDRESSES: You may mail or deliver comments on these special conditions in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM360, 1601 Lind Avenue, SW., Renton, Washington 98057-3356. You must mark your comments Docket No. NM360.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2799; facsimile (425) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment for these special conditions is impracticable, because these procedures would significantly delay certification and delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. We therefore find that good cause exists for making these special conditions effective upon issuance. However, we invite interested persons to take part in this rulemaking by submitting written comments. The most helpful comments reference a specific portion of the special conditions,