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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 33

[Doc. No. AMS-FV-14-0022; FV14-33-1 IR]

Regulations Issued Under the Export Apple Act; Exempting Bulk Shipments to Canada from Minimum Requirements and Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises the regulations issued under the Export Apple Act to exempt bulk shipments of apples to Canada from the minimum requirements and inspection provisions of the Export Apple Act, and to add a definition for bulk containers. The rule is necessary because section 10009 of the Agricultural Act of 2014 amended the Export Apple Act to exempt apples shipped to Canada in bulk containers weighing more than 100 pounds from inspection requirements.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] 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 to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document 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, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Jennie.Varela@ams.usda.gov or Christian.Nissen@ams.usda.gov.

SUPPLEMENTARY INFORMATION: Section 10009 of the Agricultural Act of 2014 amended section 4 of the Export Apple Act (7

U.S.C. 584) to add an exemption for apples shipped to Canada in bulk containers, and add a definition for bulk container to section 9 of the Export Apple Act (7 U.S.C. 589).

The Export Apple Act (Act) promotes the foreign trade of U.S. grown apples by authorizing the implementation of regulations with minimum quality, container marking, and inspection requirements. These amendments to the Act require amendments to the regulations in 7 CFR part 33.

Sections 33.10 and 33.11 of the regulations require, in part, that apples shipped to any foreign destination must meet minimum requirements and be inspected by the Federal or Federal-State Inspection Service. Section 33.12 specifies apples not subject to regulation.

This rule implements the amendments to the Act by adding a new § 33.8 (Bulk container) under "Definitions" to define a bulk container as a container that contains a quantity of apples weighing more than 100 pounds. This action also revises § 33.12 by adding an additional paragraph exempting bulk shipments to Canada from all requirements under this part.

Thus, any bulk container of apples being shipped to Canada is exempt from the minimum requirements and inspection provisions. Inspection would still be required

for apples shipped in containers of less than 100 pounds that are not otherwise exempt.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a ``non-significant regulatory action`` under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect and shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but is intended that all such statutes shall remain in full force and effect except in so far as they are inconsistent herewith or repugnant hereto (7 U.S.C. 587).

The Act provides administrative proceedings that must be exhausted before parties may file suit in court. Pursuant to 7 U.S.C. 586 and sections 33.13 and 33.14 of the regulations, any person subject to the Act may file with USDA a request for hearing, along with a written responsive answer to alleged violations of the provisions of the Act and regulations, no later than 10 days after service of notice of alleged violations, and is afforded the opportunity for a hearing on said request. After opportunity for hearing, the Secretary is authorized to refuse the issuance of certificates under this Act for periods not exceeding 90 days.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this action 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small agricultural service firms, including shippers, exporters, and carriers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

The industry estimates there are approximately 7,500 apple producers in the U.S. The National Agricultural Statistics Service reports the 2012 apple crop was valued at nearly \$3.1 billion. Assuming a normal distribution, most apple producers can be classified as small entities. According to industry statistics, there are approximately 60 apple exporters subject to regulation under the Act. Foreign Agricultural Service data estimates the value of fresh apple exports to Canada at approximately \$190 million. Assuming a normal distribution, the majority of apple exporters are small businesses. Based on the above

calculations, it can be concluded that the majority of apple producers and exporters may be classified as small entities.

This rule is issued under the authority of the Export Apple Act, as amended (7 U.S.C. 581-590). This rule revises "Regulations Issued Under Authority of the Export Apple Act" (7 CFR part 33). In accordance with the provisions of section 10009 of the Agricultural Act of 2014, this action exempts apples shipped to Canada in bulk containers from the minimum requirements and inspection provisions issued under the Act. This action also adds the definition of "bulk container" as a container that contains a quantity of apples weighing more than 100 pounds.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0143, (Export Fruit Regulations). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large apple shippers, exporters, or carriers.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this interim rule.

Interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses. Any comments received 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 rule has to be implemented because of amendments by the Agricultural Act of 2014 to the Act; (2) 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 33

Apples, Exports, Reporting and recordkeeping requirements.

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

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

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

Authority: 48 Stat. 124; 7 U.S.C. 581-590.

2. Section 33.8 is added to read as follows:

§ 33.8 Bulk container.

Bulk container means a container that contains a quantity of apples weighing more than 100 pounds.

3. In § 33.12, paragraph (d) is added to read as follows:

§ 33.12 Apples not subject to regulation.

* * * * *

(d) Apples shipped to Canada in bulk containers.

Dated: March 12, 2014.

Rex A. Barnes,
Associate Administrator,
Agricultural Marketing Service.

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