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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 51 and 52

[Doc. No. AMS-SC-16-0106]

Fresh Fruits, Vegetables and Other Products Inspection, Certification and Standards and Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products; Removal of Power of Attorney and Other Administrative Changes

AGENCY: Agricultural Marketing Service

ACTION: Final rule.

SUMMARY: This rule modifies regulations and standards issued pursuant to the Agricultural Marketing Act of 1946 by removing references to power of attorney. Further, this rule modifies language to ensure consistency between the regulations and standards for fresh and processed fruits and vegetables. Power of Attorney is an outdated, cumbersome tool that increases the cost and record retention requirements for stakeholders when conducting business. We are making these changes to eliminate these requirements. This will allow us to provide services to our customers faster and without the financial and record retention burden. The functions of the Power of Attorney are currently done by a Supervisor or “inspector in charge”.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: Section 203(c) (7 U.S.C. 1622(c)) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) (Act of 1946), as amended, directs and authorizes the Secretary of Agriculture to “develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.” Parts 51 and 52 of title 7 of the Code of Federal Regulations specify the inspection, certification, and standard requirements for fresh and processed fruit, vegetable, and specialty crops. This action removes the current language in §§ 51.19 and 52.18 referencing power of attorney. Further, language in § 51.19(a)(3) will be added to § 52.18 and language in part 52 referencing “inspector in charge” will be added to part 51 to make the sections consistent. Power of Attorney is an outdated, cumbersome tool that increases the cost and record retention requirements for stakeholders when conducting business. We are making these changes to eliminate these requirements. This will allow us to provide services to our customers faster and without the financial and record retention burden. The functions of the Power of Attorney are currently done by a Supervisor or “inspector in charge”.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563, and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive

Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect and does not preempt any state or local law, regulation, or policy unless it presents 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.

Administrative Procedure Act and Regulatory Flexibility Act

This final rule revises agency rules of practice and procedure. Under the Administrative Procedure Act, prior notice and opportunity for comment are not required for the revision of agency rules of practice and procedure. 5 U.S.C. 553(b)(3)(A). Only substantive rules require publication 30 days prior to their effective date. 5 U.S.C. 553(d). Therefore, this final rule is effective upon publication in the *Federal Register*.

In addition, because prior notice and opportunity for comment are not required, this final rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E-Government Act

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 final rule.

List of Subjects

7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirement, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, 7 CFR parts 51 and 52 are amended as follows:

1. The authority citation for parts 51 and 52 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

PART 51 - FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

2. In § 51.19:
 - a. Redesignate paragraphs (a) introductory text and (a)(1) through (4) as paragraphs (a)(1) introductory text and (a)(1)(i) through (iv), respectively;
 - b. Revise newly redesignated paragraph (a)(1)(ii);
 - c. Add the word “or” at the end of paragraph (a)(1)(iii); and

- d. Designate the undesignated paragraph following newly redesignated paragraph (a)(1)(iv) as paragraph (a)(2) and revise newly designated paragraph (a)(2).

The revisions read as follows:

§ 51.19 Issuance of certificates.

(a)(1) * * *

(ii) An inspector designated by the Administrator as the "inspector in charge," when the certificate represents composite inspection of several persons;

* * * * *

(2) *Provided*, That in all cases the inspection certificate shall be prepared in accordance with the official memoranda of the inspector or inspectors who performed the inspection.

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PART 52 - PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

3. In § 52.18:

- a. Redesignate paragraphs (a) introductory text and (a)(1) through (3) as paragraphs (a)(1) introductory text and (a)(1)(i) through (iii), respectively;
- b. Revise newly redesignated paragraph (a)(1)(ii);
- c. Designate the undesignated paragraph following newly redesignated paragraph (a)(1)(iii) as paragraph (a)(2) and revise newly designated paragraph (a)(2); and
- d. Revise paragraph (b).

The revisions read as follows:

§ 52.18 Issuance of certificates.

(a)(1) * * *

(ii) Another employee of the Inspection Service who has been authorized by the Administrator to act in a supervisory capacity.

* * * * *

(2) In all cases the inspection certificate shall be prepared in accordance with the facts set forth in the official memoranda made by the inspector or inspectors in connection with the inspection. Whenever a certificate is signed by an inspector in charge, that title must appear in connection with the signature.

(b) A certificate of loading shall be issued and signed by the inspector or licensed sampler authorized to check the loading of a specific lot of processed products: *Provided*, That, another employee of the inspection service authorized by the Administrator to act in a supervisory capacity or designated as the "inspector in charge," may sign such certificate of loading covering any processed product checkloaded by an inspector or licensed sampler and authorized by the Administrator to affix the inspector's or licensed sampler's signature to a certificate of loading which has been prepared in accordance with the facts set forth in the notes made by the inspector or licensed sampler in connection with the checkloading of a specific lot of processed products.

Dated: February 4, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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