

Dated: October 1, 1996.

Dan Glickman,

Secretary of Agriculture.

For Subpart F.

Eugene Moos,

*Under Secretary for Farm and Foreign
Agriculture Services.*

For Subpart J.

Dated: October 2, 1996.

James R. Lyons,

*Under Secretary for Natural Resources and
Environment.*

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Agricultural Marketing Service

7 CFR Part 33

[Docket No. FV96-33-1 FIR]

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: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate modifications, the provisions of an interim final rule relaxing 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.

EFFECTIVE DATE: This final rule becomes effective January 9, 1997.

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, P.O. Box 96456, room 2525-S, Washington, D.C. 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, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This 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 amends "Regulations Issued Under Authority of the Export Apple and Pear Act" [7 CFR part 33].

The 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 rule relaxes the minimum grade requirements issued under the Act for U.S.-grown apples and pears shipped only to Pacific ports of Russia. Container marking provisions also are relaxed for such shipments. This rule provides 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 benefits 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.

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. Prior to the issuance of the interim final rule, export shipments of apples were required to meet a minimum grade of U.S. No. 1 or U.S. No. 1 Early as specified in the United States Standards for Grades of Apples (7 CFR part 51, sections 51.300-51.323). Exports of summer and fall pears were required to meet a minimum grade of U.S. No. 2 as specified in the United States Standards for Grades of Summer and Fall Pears (7 CFR part 51, sections 51.1260-51.1280). Exports of winter pears were required to meet a minimum grade of U.S. No. 2 as specified in the United States Standards for Grades of Winter Pears (7 CFR part 51, sections 51.1300-51.1323). Additional restrictions for apple maggot and San Jose scale apply to both apples and pears.

This final rule continues in effect the reduction of 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, section 51.303) or U.S. No. 1 Hail (7 CFR part 51, section 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 final rule. The requirements provide that the pears 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, limbruks, heavy russet, or other means; and not 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 final rule. 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.

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 advised 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 previous requirements allowed. This change will 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 reported 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 interim final rule concerning this action was published in the September 26, 1996, Federal Register (61 FR 50421), with a 30-day comment period ending October 28, 1996. One comment was received in favor of the interim final rule suggesting several revisions.

The comment was submitted by Northwest Fruit Exporters (NFE), a non-profit organization, whose members grow, pack, ship, and export fresh apples and pears regulated under the

Act. NFE members are located in Washington, Oregon, and Idaho. NFE suggested that the U.S. Utility grade not be added as an option for apple exports because the intent of the rule is to allow shipments of hail damaged apples. NFE suggested using U.S. No. 1 Hail grade which is specifically designed to allow shipment of hail damaged apples. NFE stated further that the Utility grade makes an allowance for other quality factors but remains restrictive regarding hail damaged apples. The Department believes that it would not be appropriate to remove the U.S. Utility grade because it allows exporters the opportunity to sell apples of a lower grade even though they are not hail damaged. This provision is intended to provide exporters with flexibility. Therefore, no change is being made to the rule in response to this comment.

NFE pointed out the word "apples" is incorrectly used in paragraph (b) in Section 33.10. The paragraph refers to pears. The Department will make this correction in the regulatory text.

NFE pointed out that the proposed general definition of "damage by hard end" does not apply to the quality requirements for winter pears as stated in Section 33.10 (b)(2) and should be replaced with language commonly used to describe damage to winter pears. The following language was recommended: "Damage by skin break means any pear with one skin break larger than $\frac{3}{16}$ inch in diameter or depth, or with more than one skin break $\frac{1}{8}$ inch or larger in diameter or depth. Such pear shall be considered damaged, and scored against the grade tolerance." The Department concurs with this recommended change. The regulatory text will be modified accordingly.

NFE further suggested additional language establishing grade defect lot tolerances be included under Section 33.10(b)(2) because grade defect tolerances for a lot of pears were omitted. The Department inadvertently omitted lot tolerances for pears and therefore, the regulatory text will be modified accordingly.

NFE went on to suggest that grade defect tolerances are applicable at the time of packing; however, subsequent to storage and/or transit, only permanent type quality defects should be considered as grade defects and applied to the stated grade tolerance. NFE stated that the provision "condition after storage or transit" exists in the current U.S. Standards for Grades of Winter Pears and a new paragraph should be added to section 33.10 to capture this type of language. The Department recognizes that this provision currently exists in the U.S. Standards for Grades

of Winter Pears as well as in the U.S. Standards for Grades of Summer/Fall pears and apples. For the sake of clarity, the regulatory text will be modified by adding a new paragraph (c) to state that decay, scald or any other deterioration which may have developed on apples or pears after they have been in storage or transit shall be considered as affecting condition and not the grade.

Finally, NFE suggested that requirements be modified to permit shipments of U.S. No. 1 Hail grade apples to Mexico, using the same rationale and justification for this request as stated for shipments of U.S. No. 1 Hail grade apples to Russia. The Department believes this recommendation is beyond the scope of the interim final rule.

After analyzing the comment received and other available information, the Department finds that this final rule is appropriate.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because: (1) This rule continues in effect a relaxation of the grade requirements for apples and pears shipped to Pacific ports of Russia; (2) exporters have indicated that sales opportunities exist in Eastern Russia and shipments have already begun to take advantage of these opportunities; (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) a 30-day comment period was provided for in the interim final rule and recommended modifications should be implemented as soon as possible.

List of Subjects in 7 CFR Part 33

Administrative practice and procedure, Apples, Exports, Pears, Reporting and record keeping requirements.

Accordingly, the interim rule amending 7 CFR part 33 which was published at 61 FR 50421 on September 26, 1996, is adopted as a final rule with the following changes:

PART 33—EXPORT APPLE AND PEAR ACT

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

Authority: 7 U.S.C. 581–590.

2. In § 33.10, paragraphs (c) and (d) are redesignated as (d) and (e), respectively; a new paragraph (c) is added; and paragraph (b) is revised to read as follows:

§ 33.10 Minimum requirements.

* * * * *

(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 (Sections 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 (Sections 51.1300–51.1323 of this chapter), do not contain apple maggot, and do 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: *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, limbruks, 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 or 1% shall be allowed for decay and/or breakdown. 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. 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 skin break* means 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. Such pear shall be considered damaged, and scored against the grade tolerance.

Damage by skin break means 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. Such pear 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;

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

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Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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