

§ 33.11

apply to pears meeting minimum quality requirements of this section and shipped to Pacific ports of Russia.

[24 FR 6610, Aug. 14, 1959, as amended at 28 FR 12901, Dec. 12, 1963; 32 FR 9298, June 30, 1967; 33 FR 12819, Sept. 11, 1968; 61 FR 50422, Sept. 26, 1996; 62 FR 1033, Jan. 8, 1997]

§ 33.11 Inspection and certification.

(a) Each person shipping, or offering for shipment, apples or pears 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, vegetables and other products (Part 2851¹ of this chapter) and certified as meeting the requirements of the Act and this part. No carrier shall transport, or receive for transportation, apples or pears 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 or pears. 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 and Pear Act." The shipper shall deliver a copy of the Export Form Certificate or Memorandum of Inspection to the export carrier. Whenever apples or pears are inspected and certified at any 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 or pears and such agent shall deliver such copy to the proper official of the carrier on which the apples or pears, 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 or pears have been obtained for a determination as to compliance with tolerance for spray residue, established

¹Part 2851 was redesignated as part 51 at 46 FR 63203, Dec. 31, 1981.

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under the Federal Food, Drug and Cosmetic Act, as amended (52 Stat. 1040; 21 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 and pears 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 or pears to any foreign country not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples or pears packed in standard boxes on a single conveyance: *Provided*, That pears may be shipped to Western Hemisphere countries touching or lying south of the Tropic of Cancer in less than carload lots not exceeding one such lot to any one consignee or receiver on a single conveyance.

(b) Apples or pears 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.

(d) Pears for processing which do not meet the grade standards specified in § 33.10, if such pears grade at least U.S. No. 1 as specified in U.S. Standards for Pears for Canning (§§ 51.1345 to 51.1358 of this chapter), and if the containers are conspicuously marked "Cannery" (in letters at least two inches high) if

inspected and certified as meeting other requirements of §§33.10 and 33.11.

[24 FR 6610, Aug. 14, 1959, as amended at 30 FR 8775, July 13, 1965; 54 FR 29318, July 12, 1989]

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 or pears to any foreign destination in violation of any provisions of the act or this part, he shall cause notice to be given to the person accused of the nature of the charges against him 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 makes written request therefor and files a written responsive answer to the charges made not later than 10 days after service of such notice upon him. The right to hearing shall be restricted to matters in issue. At such hearing, he shall have the right to be present in person or by counsel and to submit evidence and argument in his 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.

§ 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 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.

INTERPRETATIVE RULES

§ 33.50 Apples and pears for processing.

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

[25 FR 12430, Dec. 6, 1960]

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

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0581-0143.

[49 FR 23825, June 8, 1984]

PART 34 [RESERVED]

PART 35—EXPORT GRAPES AND PLUMS

DEFINITIONS

- Sec. 35.1 Act.
- 35.2 Person.
- 35.3 Secretary.