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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 33 and 35

[Doc. No. AMS-FV-14-0099; FV15-33/35-1 PR]

Regulations Issued under Authority of the Export Apple Act and Export Grapes and Plums; Changes to Export Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the reporting of export certificate information under regulations issued pursuant to the Export Apple Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35). This change would require shippers of apples and grapes exported from the United States to electronically enter an Export Form Certificate number or a USDA-defined exemption code into the Automated Export System (AES). This rule would also define "shipper," shift the current file retention requirement from carriers to shippers, and require shippers to provide, upon request, copies of the certificates to the Agricultural Marketing Service (AMS). These changes would enable AMS to track exported apple and grape shipments to ensure that exports meet inspection and certification requirements. This action is also required to support the

International Trade Data System (ITDS), a key White House economic initiative that will automate the filing of export and import information by the trade. This proposal would also remove obsolete regulations and make clarifying changes. It also announces AMS' intention to request revision to a currently approved information collection for exported apples and grapes.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops 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 proposal 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: Shannon Ramirez, Compliance and Enforcement Specialist, or Vincent Fusaro, Compliance and Enforcement Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Shannon.Ramirez@ams.usda.gov or VincentJ.Fusaro@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Export Apple Act (7 U.S.C. 581-590) and the Export Grape and Plum Act (7 U.S.C. 591-599) (together hereinafter referred to as the "Export Fruit Acts"). The Export Fruit Acts promote foreign trade of U.S.-grown fruit by authorizing the implementation of regulations related to quality, container markings, and inspection requirements. These regulations are contained in 7 CFR part 33

(Regulations Issued under the Export Apple Act) and 7 CFR part 35 (Export Grapes and Plums).

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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect and shall not abrogate nor nullify any other regulations, whether State or Federal, dealing with the same subjects. It is intended that all such regulations shall remain in full force and effect except in so far as they are inconsistent herewith or repugnant hereto (7 U.S.C. 587; 7 U.S.C. 597).

The Export Fruit Acts provide for 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 (for apples) and 7 U.S.C. 596 and sections 35.14 and 35.15 of the regulations (for grapes), any person subject to the Export Fruit Acts may file with USDA a request for hearing, along with a written responsive answer to alleged violations of the provisions of the Export Fruit Acts and regulations, no later than 10 days after service of notice of alleged violations. After opportunity for hearing, the Secretary is authorized to refuse the issuance of certificates under the Export Fruit Acts for a period not exceeding 90 days.

This proposed rule would change the reporting of export certificate information under regulations issued

pursuant to both the Export Apple Act and the Export Grape and Plum Act (7 CFR part 33, "Regulations Issued Under Authority of the Export Apple Act," and 7 CFR part 35, "Export Grapes and Plums," respectively). Shippers of apples and grapes exported from the United States subject to inspection would be required to enter the certificate number from inspection certificates (i.e., Export Form Certificates) into AES. For apples shipped to Canada in bulk containers, which are exempt from inspection requirements, shippers would be required to enter a special USDA-defined exemption code in lieu of an Export Form Certificate number. Shippers would also be required to maintain paper or electronic copies of the certificates and to provide copies to AMS upon request. AMS is responsible for monitoring apple and grape export shipments, and these proposed regulatory changes would help ensure that these shipments comply with inspection and certification requirements.

This proposed rule would also define "shipper" and would remove the requirement that carriers of exported apples and grapes retain certificates on file (because the requirement to retain the certificates would shift to shippers of exported apples and grapes). It would also remove regulations that are no longer applicable to grape

exports and add structure and language to clarify the regulations.

Plums are not currently regulated under the Export Grape and Plum Act; therefore, this change would not impact shipments of plums exported from the United States. If plums exported from the United States are regulated in the future under the Export Grape and Plum Act, the reporting of export certificate information similar to what is being proposed herein for exported grapes and apples would be proposed.

Sections 33.11(a) and 35.12(b) of the regulations issued under the Export Fruit Acts for apples and grapes, respectively, specify that, prior to export, the fruit must be inspected by the Federal or Federal-State Inspection Service (unless the fruit is otherwise exempted from inspection under the Export Fruit Acts). These sections further specify that Export Form Certificates must be issued by the inspection service and must contain a statement indicating the fruit meets the requirements of the Export Fruit Acts. Additionally, these sections currently require that shippers provide a copy of the certificates to the export carrier or, in those instances where the fruit is inspected and certified at any location other than the port of exportation, to the agent of the

first carrier who transports the fruit to port for exportation. These two sections also currently contain requirements related to the retention of certificates by export carriers and spray residue tolerance.

Section 33.12 of the export apple regulations specifies those apples that are not subject to regulation, including apples shipped to Canada in bulk containers (§ 33.12(d)), which are containers that hold a quantity of apples weighing more than 100 pounds.

Sections 33.2 and 33.4 of the export apple regulations and §§ 35.2 and 35.4 of the export grape regulations define "person" and "carrier," respectively. The term "shipper" is used in parts 33 and 35 but is not currently defined in either of those regulations.

Filing Export Information in the Automated Export System (AES)

The Foreign Relations Authorization Act (FRAA) (P.L. 107-228) authorizes regulations requiring that all persons who are required to file export information under Chapter 9 of Title 13 of the U.S. Code (Collection and Publication of Foreign Commerce and Trade Statistics) file such information through the Automated Export System (AES) for all shipments where a paper Shipper's Export Declaration was previously required. As such, shippers of most U.S.-

grown apples and grapes are required to electronically file export shipment information in AES.

AES is a joint venture between U.S. Customs and Border Protection (CBP) and the U.S. Census Bureau (Census) that was implemented in phases, starting in 1995. It is a nationwide system, available at all U.S. ports, that serves as a central point for the electronic collection of export data that are used by several different Federal government agencies including Census and CBP. Census regulations issued under the authority of the FRAA and related to AES include the Foreign Trade Regulations (15 CFR part 30) and the Export Clearance Requirements (15 CFR part 758).

AMS is responsible for enforcing the regulations under the Export Fruit Acts, including verifying that exported apples and grapes that are subject to regulation are inspected and certified as meeting quality requirements. However, the Export Fruit Acts regulations do not currently require that shippers provide AMS with information about inspected and certified fruit.

AMS has determined that access to the Census Bureau's AES data would allow AMS to monitor compliance with and enforce the regulations issued under the Export Fruit Acts. As a result, AMS and Census have entered into a Memorandum of Understanding that will give AMS access to certain

specific data in the AES related to apple and grape exports, including an Export Form Certificate number that is associated with each lot of inspected and certified fruit or, in lieu of a certificate number, a USDA-defined exemption code (BULK CONTRS) for apples shipped to Canada in bulk containers.

For those apples and grapes subject to inspection, information about each inspected lot of apples or grapes is noted on an Export Form Certificate (FV-205 or FV-207 paper form; FV-205e and FV-207e electronic form) that is completed by an inspector. In addition to stating whether the lot meets the export requirements, the certificate also contains information about the date and place of inspection; the name of the applicant; and the quantity, variety, and identification marks of the lot. The certificate is provided to the shipper and is identified with a unique certificate number. The inspection service that inspects and certifies the export shipment will also electronically maintain the certificate information.

AMS believes that the most effective way to verify that apple and grape exports meet export inspection and certification requirements would be to have shippers enter the unique Export Form Certificate numbers into the AES. AMS would then verify the validity of a certificate number

by cross-referencing it and the associated shipment information with inspection data (e.g., certificate number, variety, quantity) that AMS would receive from its Specialty Crops Inspection (SCI) Division.

Some exported apples and grapes are exempt from the inspection requirements of the Export Fruit Acts regulations pursuant to § 33.12 for apples and §§ 35.12 and 35.13 for grapes. In most instances, information about a shipment (e.g., the weight and destination of the shipment) that is entered by a shipper (or shipper's agent) into AES will determine if the shipper is required to also enter an Export Form Certificate number in AES. As an example, a shipment of apples weighing less than 5,000 pounds exported to any foreign country is exempt from inspection requirements. If a shipment of apples weighing 4,000 pounds is destined for Canada, this information would be entered into AES. From that AES shipment information, the system would determine that entry of an Export Form Certificate number was not required because the shipment is exempt from inspection requirements.

In comparison, if a shipment of apples weighing 6,000 pounds in bulk containers is destined for Canada, the shipper's entry of that shipment's weight and destination into AES would trigger the requirement that the shipper

enter an Export Form Certificate number because the weight and destination of the shipment would meet the parameters associated with mandatory inspection. However, apples in bulk containers destined for Canada are exempt from inspection requirements pursuant to § 33.12(d). Currently, there is no mechanism within AES that will recognize this exemption, so USDA has created a special exemption code (BULK CONTRS) that shippers of these apples would enter in the Export Form Certificate field in lieu of a certificate number. Entry of this special USDA-defined exemption code would enable shippers of apples in bulk containers destined for Canada to complete the entry of information in AES.

In the future, AMS intends to work with Census to develop a new harmonized tariff schedule (HTS) code specifically for exported apples in bulk containers that are destined for Canada. Once this HTS code is developed, shippers would enter that code into AES, which would signal to AES that the shipment is exempt and would therefore not require entry of the special exemption code. Once this new HTS code becomes available, changes to the regulations would be proposed to remove the requirement to enter the special BULK CONTRS exemption code.

As noted earlier, most shippers are accustomed to entering data about exports into AES to create mandatory

Electronic Export Information (EEI) about each shipment. There are various methods for filing EEI into AES, such as through AES-certified software from a third-party vendor or through AESDirect, a free Internet application supported by Census. The EEI contains basic information about an export including but not limited to the names and addresses of the parties to a transaction; the Harmonized Tariff Schedule number; and the description, quantity, and value of the exported items. In 2014, the Census Bureau agreed to mandate entry of the Export Form Certificate number (or the exemption code for apples shipped in bulk containers to Canada) by shippers in the AES for AMS' tracking and enforcement purposes. Shippers would be required to electronically enter Export Form Certificate numbers or the exemption code for bulk container apples destined for Canada (BULK CONTRS) in AES. To require that shippers enter the Export Form Certificate number or, when applicable, the BULK CONTRS exemption code, the Export Fruit Acts regulations would be revised to add a new § 33.11(b) for apples and a new § 35.12(d) for grapes.

This proposed action would also require a shipper to maintain and submit, upon request, a paper or electronic copy of the Export Form Certificate to AMS. As previously noted, AMS would compare EEI from AES against inspection

information from its SCI Division. However, there could be instances when AMS might need further verification of inspection and would, therefore, need to request a copy of the Export Form Certificate from the shipper. For example, if a certificate number in AES does not match any certificate numbers in SCI-provided data, AMS might require that the shipper provide a copy of an Export Form Certificate to AMS so that the information on that certificate could be compared against the EEI from AES. These proposed changes would give AMS the ability to track exports of apples and grapes to confirm that quality requirements are being met. Accordingly, this requirement would be added to the Export Fruit Acts regulations in § 33.11(c) for apples and § 35.12(c) for grapes.

In conjunction with these proposed new recordkeeping requirements, this proposed action would also remove the requirement in § 33.11(a) for apples and § 35.12(c) for grapes that carriers of exported fruit retain a copy of the Export Form Certificate. This requirement would no longer be necessary for AMS compliance monitoring because, as proposed herein, shippers would be required to retain a copy of the certificate (and upon request, the shipper would be required to provide such copy, electronically or in paper form, to AMS).

Streamlining the Export Process under the International Trade Data System (ITDS)

Changing the Export Fruit Acts regulations to provide for the electronic entry of an Export Form Certificate number supports the International Trade Data System (ITDS), a key White House economic initiative that has been under development for over ten years and is mandated for completion by December 31, 2016 (pursuant to Executive Order 13659, Streamlining the Export/Import Process for America's Businesses, signed by President Obama on February 19, 2014; 79 FR 10657). Under ITDS, the export and import trade will file shipment data through an electronic "single window," instead of completing multiple paper-based forms to report the same information to different government agencies. ITDS will greatly reduce the burden on America's export and import trade while still providing information necessary for the United States to ensure compliance with its laws.

By the end of 2016, the ITDS "single window" will be presented to the export and import trade through CBP's Automated Commercial Environment (ACE) platform. ACE will be the primary system through which the global trading community will file information about imports and exports

so that admissibility into the U.S. may be determined and government agencies may monitor compliance.

In March 2014, AES functionality was incorporated into ACE, and export transactions are now processed in ACE. The migration of AES functionality to ACE was, for the most part, transparent to filers of export shipment data. This system migration supports the ITDS "single window" because, as noted earlier, ACE will be the system primarily used by the trade community to file import and export shipment data, with the functionality of AES embedded within that system.

Prior to the implementation of the ITDS "single window," CBP is requiring that the 47 partnering government agencies (PGAs) that are participating in the ITDS project, including AMS, ensure that agency regulations provide for the electronic entry of export and/or import information.

AMS' Marketing Order and Agreement Division (MOAD) is currently developing the functionality of a new automated system called the Compliance and Enforcement Management System (CEMS) that will store and analyze data in support of ITDS. CEMS will receive export data from the ACE system that will be utilized in monitoring compliance with regulations under the Export Fruit Acts.

The revised reporting requirements for exported apples and grapes will meet CBP's requirements for ITDS/ACE by providing for the electronic entry of the Export Form Certificate number (or the special BULK CONTRS exemption code, when applicable).

Miscellaneous Proposed Changes

In addition to the previously described changes, this action would make changes to update and clarify the regulations. First, a definition of "shipper" would be added to the regulations in § 33.9 for apples and § 35.9 for grapes. This change is intended to provide clarity about a commonly used term.

Additionally, gender-specific language would be changed from "he" to "he or she" in new § 33.11(d) and § 35.12(e).

In addition, existing § 35.12(d) would be removed because it is no longer needed. The requirements in § 35.12(d) were enacted to fulfill provision 2 of the Export Grape and Plum Act (7 U.S.C. § 592), which provides that grapes could be shipped in fulfillment of contracts that were entered into prior to the effective date of the Export Grape and Plum Act regulations, as long as those grapes were shipped within 2 months of the date of the contracts. The intent of § 35.12(d) was to provide

exporters with an opportunity to meet prior contractual obligations and comply with the newly enacted regulations without meeting additional requirements. Because the need for § 35.12(d) no longer exists, this section would be removed.

Finally, in addition to new paragraphs being added to §§ 33.11 and 33.12, existing §§ 33.11(a) and 35.12(b)(2) would be reorganized into multiple paragraphs in an effort to make the regulations easier to read, understand, and follow. Adding additional requirements to already lengthy paragraphs might cause confusion and misunderstanding; therefore, reorganization was deemed to be appropriate. To further improve the overall readability of §§ 33.11 and 35.12, headings would also be added at the beginning of each paragraph to help the reader quickly identify the paragraph's content.

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 and carriers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

This proposed rule would change the reporting of export certificate information under regulations issued pursuant to the Export Apple Act and the Export Grape and Plum Act (7 CFR part 33, "Regulations Issued Under Authority of the Export Apple Act," and 7 CFR part 35, "Export Grapes and Plums," respectively) by requiring shippers of apples and grapes exported from the United States to enter into AES the certificate numbers of Export Form Certificates for such exports (or, in lieu of certificate numbers, the exemption code BULK CONTRS for apples in bulk bins destined for Canada). It would also require shippers to provide, upon request, paper or electronic copies of the certificates to AMS. It would also remove the requirement that carriers retain copies of the certificates. Plums are not currently regulated under 7 CFR part 35, so this change has no impact on exporters or carriers of plums.

Requiring shippers of apples and grapes to electronically enter an export certificate number (or the BULK CONTRS exemption code) would have very little impact on them. The certificate number is currently provided to shippers on the certificate they receive from the Federal or Federal-State Inspection Service, and AMS is providing the special BULK CONTRS exemption code to shippers for those instances when it is required. Also, shippers already use AES to enter Electronic Export Information (EEI) about shipments, currently approved for collection under OMB No. 0607-0152, and entry of the certificate number or exemption code would be part of that EEI process.

Finally, shippers currently provide copies of Export Form Certificates to other parties, such as carriers, as required by the Export Fruit Acts regulations. Therefore, requiring shippers to provide AMS with a copy of an Export Form Certificate (upon request, when other methods of compliance verification are not available to AMS) would be a usual and customary practice. This proposed action would also require that shippers maintain certificates (electronic or paper) on file for a minimum of three (3) years in the event AMS would require that a shipper provide proof of inspection for compliance purposes. Maintaining records, such as export certificates, is a standard

business practice and, therefore, should not have a major economic impact on shippers.

These proposed changes would create a minimal burden on shippers while providing AMS with the ability to properly monitor export shipments for compliance with the regulations.

Removing the requirement that carriers of exported apples and grapes retain copies of inspection certificates (Export Form Certificates) would reduce the recordkeeping burden on those carriers.

According to apple industry statistics, there are approximately 60 shippers of exported apples subject to regulation under the Export Apple Act. USDA's Foreign Agricultural Service (FAS) data estimates the value of fresh apple exports subject to regulation in 2015 was approximately \$1.0 billion. Therefore, the estimated receipts for shippers of exported apples is well over \$7,500,000.

According to grape industry information, there are approximately 14 shippers of exported grapes subject to regulation under the Export Grape and Plum Act. Data provided by FAS indicate that the estimated value of grape exports in 2015 that were subject to these regulations was

\$512 million. Therefore, the estimated receipts for shippers of exported grapes is well over \$7,500,000.

USDA estimates there are approximately 15 carriers of exported apples and 5 carriers of exported grapes that would be impacted by the lessening of regulatory requirements proposed by this action. USDA does not have access to data about the business sizes of these carriers.

Based on the above information, it may be concluded that a majority of shippers of exported apples and grapes would not be classified as small businesses. USDA is unable to make a determination about whether carriers of exported apples and grapes could be classified as small businesses.

This proposed rule is issued under the authority of the Export Apple Act (7 U.S.C. 581-590), and the Export Grape and Plum Act (7 U.S.C. 591-599). This proposed rule proposes changing "Regulations Issued under Authority of the Export Apple Act" (7 CFR part 33) and "Export Grapes and Plums" (7 CFR part 35). This action would require shippers of apples and grapes exported from the United States to enter the Export Form Certificate number for those exports into the U.S. Census Bureau's Automated Export System (AES) (or, in lieu of a certificate number, to enter exemption code BULK CONTRS for apples in bulk

containers destined for Canada). It would also require shippers to maintain and provide, upon request, a paper or electronic copy of the Export Form Certificate to AMS and would remove the requirement that carriers retain copies of the certificates. These changes to the reporting requirements would allow AMS to verify that shipments of exported apples and grapes are in compliance with the quality requirement regulations.

There are estimated to be 60 shippers of U.S.-grown apples, 14 shippers of U.S.-grown grapes, and 20 carriers of these apples and grapes subject to the Export Fruit Acts regulations. The shippers currently receive copies of Export Form Certificates from the Federal or Federal-State Inspection Service upon completion of an inspection of apples or grapes destined for export. The regulations currently require that the shippers provide copies of the certificates to the export carriers who transport the fruit, and these carriers are, in turn, required to keep these certificates on file for at least three years following the date of export. The burden of recordkeeping for the maintenance of these certificates is currently approved by the Office of Management and Budget (OMB) under OMB No. 0581-0143, "Export Fruit Acts" (7 U.S.C. 581-590 and 7 U.S.C. 591-599).

Regarding alternatives to this proposed action, AMS considered making no changes to the Export Fruit Acts regulations. However, AMS determined that having the Export Form Certificate number for apples and grapes exported from the United States is necessary for monitoring compliance of these shipments with the regulations. AMS also considered not requiring shippers of apples in bulk containers destined for Canada to enter a special USDA-defined exemption code in lieu of a certificate number. However, until a new HTS code is created for these exempt apples, shipments of bulk containers of apples destined for Canada will require entry of data in the AES export certificate number field; therefore, the BULK CONTRS exemption code would enable shippers of these apples to complete the electronic entry of export data in AES.

AMS also considered requiring shippers to provide AMS with a paper or electronic copy of all Export Form Certificates (rather than just upon request) but determined that entering the certificate number in AES would be less burdensome for shippers. AMS also determined that this change would meet CBP's requirement that all government agencies who are partnering with CBP on the ITDS project (including AMS) update their regulations to provide for the electronic entry of export and import shipment data.

AMS also considered not requesting a shipper to submit a copy of an Export Form Certificate upon request; however, there may be some unique cases where additional verification of compliance would be required if AES or SCI data were not sufficient.

Finally, AMS considered keeping the requirement that carriers maintain copies of the Export Form Certificates on file; however, AMS determined that the other changes proposed herein would make this requirement redundant and burdensome. Therefore, alternatives to this proposed rule were rejected.

This proposed rule would revise the information collection currently approved under OMB No. 0581-0143 by increasing the existing recordkeeping burden on shippers and reducing the existing recordkeeping burden on carriers. These changes in burden will be further explained in the **Paperwork Reduction Act** section below.

AMS is responsible for enforcing the regulations of the Export Fruit Acts, including verification that export shipments of apples and grapes meet quality requirements. Currently, the regulations do not require shippers of these export fruits to provide AMS with proof of inspection and certification compliance. Without this proposed change to

the regulations, AMS will lack the ability to effectively meet its duty of enforcement.

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 proposed rule.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because (1) the export industry is fully aware of ITDS and its goal to streamline and automate paper-based processes and has attended annual ITDS Trade Support Network plenary sessions conducted by the U.S. government over the past few years, and (2) CPB is

requiring the timely update of import and export regulations to meet the ITDS electronic data submission requirement. All written comments timely received will be considered before a final determination is made on this matter.

All written comments timely received will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS announces its intention to submit a revision to a currently approved information collection.

Title: Export Fruit Acts, 7 U.S.C. 581-590 and 7 U.S.C. 591-599.

OMB Number: 0581-0143.

Type of Request: Revision.

Abstract: The information collection requirements contained in this request are necessary for the administration of proposed amendments to regulations authorized by the Export Apple Act and the Export Grape and Plum Act ("Export Fruit Acts"). These regulations are found at 7 CFR part 33, "Regulations Issued under Authority of

the Export Apple Act," and 7 CFR part 35, "Export Grape and Plum Act."

Under the Export Fruit Acts regulations, unless otherwise exempted by those Acts, each shipment of fresh apples and grapes must be inspected by the Federal or Federal-State Inspection Service to ensure the fruit meets quality and other requirements effective under the Acts. This inspection and certification must occur prior to export. If the inspection service determines that a lot of apples or grapes intended for export meets the applicable quality requirements, the inspector completes an Export Form Certificate (currently, a paper FV-207 or electronic FV-207e for non-Canadian export destinations and a paper FV-205 or electronic FV-205e for exports to Canada), certifying the fruit meets quality export requirements and providing shipping identification information. This certificate is provided to the shipper of the apples or grapes. In turn, the shipper must then provide a copy of the certificate to the export carrier or, if the fruit is inspected and certified somewhere other than the port of exportation, to the agent of the first carrier who transports the fruit to port for exportation. Currently, export carriers must keep these certificate copies on file for at least three years after the date of export.

A shipper does not currently complete any form or file with USDA any form or form-related information as part of this inspection and certification process.

This proposed action would establish a requirement that shippers enter the Export Form Certificate number assigned to each inspection certificate into the Automated Export System (AES), an existing system that facilitates the electronic entry of information about export shipments. The Marketing Order and Agreement Division (MOAD) would cross-reference this certificate number and the associated export shipment information (EEI) with inspection information provided electronically to MOAD by SCI, thereby allowing MOAD to monitor compliance with the regulations. The collection of AES data, which would include the Export Form Certificate number or the special BULK CONTRS exemption code, is approved under the Census Bureau's OMB No. 0607-0152; therefore, the estimated burden associated with the electronic entry of the certificate number will not be included in this USDA action.

In addition, this proposed action would require shippers to maintain and provide, upon request, a paper or electronic copy of the Export Form Certificate to MOAD when needed to monitor compliance with regulations. MOAD anticipates that the majority of its compliance monitoring

would be accomplished by verifying the Export Form Certificate number and other EEI entered by a shipper into AES against inspection data provided by SCI; however, when needed, MOAD would request copies of these certificates from shippers to help verify that apple and grape exports meet export inspection and certification requirements.

Finally, this proposed action would remove the requirement that carriers retain a copy of the Export Form Certificate. As noted above, this action would add a requirement that a shipper maintain and provide to MOAD, upon request, a paper or electronic copy of the certificate. MOAD would require a shipper to submit a copy of the certificate in those cases when it would be needed to monitor compliance. Because shippers would be responsible for maintaining and submitting the certificates, upon request, MOAD would no longer require a carrier to retain a copy of these certificates for its compliance purposes.

A shipper's failure to provide proof of compliance to MOAD could result in a compliance investigation and legal action, if warranted.

The information collection under OMB No. 0581-0143 was last approved in 2013. On June 14, 2016, AMS published a 60-day Notice in the Federal Register announcing its intent

to renew the collection (81 FR 38656-57), followed by a 30-day Notice in the Federal Register for OMB review (81 FR 55428).

The currently approved collection authorizes the use of FV-207 (inspection certificate for export shipments bound for non-Canadian destinations). In the 2016 renewal, AMS added the FV-205 form (inspection certificate for Canadian-bound export shipments) that is also used by SCI (the FV-205 was not previously approved under this or any other OMB collection) and revised it to combine information from the existing FV-205 and FV-207 forms. As a result, the existing FV-207 will be discontinued. In the 2016 renewal, AMS is also seeking OMB approval to decrease the burden per certificate from the currently approved 15 minutes to 5 minutes. This is sufficient time to complete the related recordkeeping actions.

In the last renewal of the collection in 2013, it was reported that a total of 102 respondents (68 shippers and 15 carriers for exported apples, and 14 shippers and 5 carriers for exported grapes) use FV-207. Current industry data indicate a slight reduction in the estimated number of export apple shippers (60) but no changes in the estimated number of export grape shippers (14) or carriers of export apples (15) and grapes (5).

The 2013 renewal reported the number of certificates per year to be approximately one response per respondent. This suggested that there were only 102 certificates issued per year. This was reported in error, and the 2016 renewal provides more accurate figures. USDA's Foreign Agricultural Service estimates that, for the five-year period 2011-2015, the average number of export apple and grape shipments requiring inspection per year was 42,326 for apples and 10,462 for grapes, for a total five-year average of 52,788 certificates per year that would need to be maintained.

Based on this information and the proposed decreased burden per certificate, the 2016 renewal estimates a total recordkeeping burden of 4,381 hours, an increase of 4,356 burden hours from the currently approved 25 burden hours.

In addition, AMS estimates it may require shippers to submit approximately 10 percent of these certificates (5,279) upon request. The estimated burden for maintaining the revised FV-205 form certificates as well as for submitting an estimated 10 percent of those certificates to AMS, when requested, would be 5 minutes, which is less than the current 15-minute recordkeeping burden. As a result of this action, the information collection package would be revised to reflect a total estimated recordkeeping burden

of 4,837 hours. Since carriers would no longer be required to keep copies of the certificates, the current recordkeeping burden for carriers of apples and grapes would be removed. AMS would submit a Justification for Change to OMB for approval that encompasses these revisions.

As noted earlier, the FV-205 form is being revised to combine the information contained on the existing FV-205 and FV-207 forms; this change will result in discontinuance of the FV-207 form. The FV-205 update also adds instructions for the shipper regarding entry of the Export Form Certificate number in AES for exported apples and grapes and revises the text to include a burden statement and other minor modifications, such as updating the program name in the form heading. SCI will continue to use the existing electronic versions of the forms (FV-205e and FV-207e) until SCI's Fresh Electronic Inspection Reporting System (FEIRS) is modified to reflect the data contained in the revised FV-205 form. FEIRS allows inspectors to electronically enter and report inspection data; it is able to electronically transmit a certificate to an email address or fax number, or the certificate may be printed. Once the necessary FEIRS revisions are completed to enable

entry of data to the revised FV-205e form, the FV-207e form will be discontinued.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 5 minutes per response for retention of the certificate by shippers and also for submission, upon request, of the certificate by shippers to MOAD.

Respondents: Shippers of apple exports and grape exports.

Estimated Number of Respondents: 74 (60 for apples and 14 for grapes).

Estimated Total Annual Responses: 58,067 (42,326 certificates maintained and 4,233 certificates potentially submitted to MOAD for apples; and 10,462 certificates maintained and 1,046 certificates potentially submitted to MOAD for grapes).

Estimated Number of Responses per Respondent: 775 for apples and 822 for grapes.

Estimated Total Annual Burden on Respondents: 4,837 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of

the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0143 and "Export Fruit Acts." Comments should be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies in general to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 33

Apples, Exports, Pears, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 35

Administrative practice and procedure, Exports, Grapes, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR parts 33 and 35 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. Add new § 33.9 to read as follows:

§33.9 Shipper.

Shipper means any person who ships or offers for shipment apples to any foreign destination.

3. Revise § 33.11 to read as follows:

§33.11 Inspection and certification.

(a) Inspection and certification. 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 title) and certified as meeting the requirements of the Act and this part. No carrier shall transport apples, or receive apples for transportation 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."

(b) Export Form Certificate number. The shipper (or shipper's authorized agent) shall enter the Export Form Certificate number in the Automated Export System (AES), pursuant to the Electronic Export Information (EEI) filing requirements under the Foreign Trade Regulations (15 CFR part 30) and Export Clearance Requirements (15 CFR part 758), except the exemption code BULK CONTRS shall be entered for apples in bulk containers destined for Canada.

(c) Delivery and filing of Export Form Certificate. 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 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 the copy to the proper official of the carrier on which the apples, covered by the certificate or memorandum, are to be exported. The shipper shall also

maintain an electronic or paper copy of the Export Form Certificate for a period of not less than three (3) years after date of export and shall submit, upon request from USDA, an electronic or paper copy of the Export Form Certificate to USDA, AMS, Specialty Crops Program, Marketing Order and Agreement Division, 1400 Independence Avenue, SW, Stop 0237, Washington, DC 20250-0237; telephone (202) 720-4607; fax (202) 720-5698; or e-mail AMSCompliance@ams.usda.gov.

(d) Spray residue tolerance. 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; 21 U.S.C. 301 et seq.), he or she shall not issue a certificate on the lot unless it complies with such tolerances.

PART 35 - EXPORT GRAPES AND PLUMS

4. The authority citation for 7 CFR part 35 continues to read as follows:
Authority: 74 Stat. 734; 75 Stat. 220; 7 U.S.C. 591-599.

5. Add § 35.9 to read as follows:
§35.9 Shipper.

Shipper means any person who ships or offers for shipment any variety of vinifera species table grapes to any foreign destination.

6. Revise § 35.12 to read as follows:

§35.12 Inspection and certification.

(a) Inspection. Each person shipping or offering for shipment any variety of vinifera species table grapes to any foreign destination other than destinations in Canada or Mexico shall cause them to be inspected within 14 days prior to date of export 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 51 of this title) and certified as meeting the requirements of the Act and this part.

(b) Certification. The Federal or Federal-State certificate shall be designated as an "Export Form Certificate" and shall include one of the following statements as applicable:

(1) For any variety meeting specifications of paragraph (a) of §35.11 "Meets requirements of Export Grape and Plum Act" or (2) For any variety meeting specifications of paragraph (b) of §35.11 "Meets requirements of Export Grape and Plum Act except for export to destinations in

Europe, Greenland, or Japan.” No carrier shall transport or receive for transportation any such variety to any foreign destination other than Canada or Mexico unless a copy of the Export Form Certificate issued thereon showing that the grapes meet requirements for the applicable export destination is surrendered to such carrier when such variety is received.

(c) Delivery and filing of Export Form Certificate.

The shipper shall deliver a copy of the Export Form Certificate covering the shipment to the export carrier. Whenever grapes are inspected and certified at any point other than port of exportation, the shipper shall deliver a copy of the Export Form Certificate to the agent of the first carrier that thereafter transports such grapes, and such agent shall deliver such copy to the proper official of the carrier on which the grapes are to be exported. The shipper shall also maintain an electronic or paper copy of the Export Form Certificate for a period of not less than three (3) years after date of export and shall submit, upon request from USDA, an electronic or paper copy of the Export Form Certificate to USDA, AMS, Specialty Crops Program, Marketing Order and Agreement Division, 1400 Independence Avenue, SW, Stop 0237, Washington, DC 20250-

0237; telephone (202) 720-4607; fax (202) 720-5698; or e-mail AMSCompliance@ams.usda.gov.

(d) Export Form Certificate number. The shipper (or shipper's authorized agent) shall enter the Export Form Certificate number in the U.S. Census Bureau's Automated Export System (AES), pursuant to the Electronic Export Information (EEI) filing requirements under the Foreign Trade Regulations (15 CFR part 30) and Export Clearance Requirements (15 CFR part 758).

(e) Spray residue tolerance. If the inspector has reason to believe that samples of a lot of any variety of vinifera species table grapes 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; 21 U.S.C. 301 *et seq.*), he or she shall not issue a certificate on the lot unless it complies with such tolerances.

Dated: November 29, 2016.

Elanor Starmer
Administrator
Agricultural Marketing Service
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