

procurement by State agencies and sponsors.

Paperwork Reduction Act

This final rule contains information collection requirements in § 225.8(d) that have been approved by the Office of Management and Budget on February 28, 2000 (control number 0584-0280) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

List of Subjects in 7 CFR Part 225

Food and Nutrition Service, Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR part 225, which was published at 64 FR 72474 on December 28, 1999, is adopted as a final rule with the following changes:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13, and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. In § 225.8, add new paragraph (d) to read as follows:

§ 225.8 Records and reports.

* * * * *

(d)(1) By May 1 of each year, State agencies must submit to the appropriate FNSRO a list of potential private nonprofit organization sponsors. The list must include the following information for each applicant sponsor:

- (i) Name and address;
- (ii) Geographical area(s) proposed to be served;
- (iii) Proposed number of sites; and
- (iv) Any available details of each proposed site including address, dates of operation, and estimated daily attendance.

(2) State agencies must also notify the appropriate FNSRO within 5 working days after they approve each private nonprofit organization to participate as a SFSP sponsor. When State agencies notify the FNSRO of sponsor approval, they must provide the following information:

- (i) Any changes to site locations, dates of operation, and estimated daily attendance that was previously provided;
- (ii) The hours and type(s) of approved meal service at each site;
- (iii) The type of site approval—open, restricted open, closed enrolled, or camp; and
- (iv) Any other important details about each site that would help the FNSRO

plan reviews, including whether the site is rural or urban, or vended or self-preparation.

3. In 225.15, revise paragraph (f)(4)(vii) to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(f) * * *

(4) * * *

(vii) A notice placed immediately above the signature block stating that the person signing the application certifies that all information provided is correct, that the household is applying for Federal benefits in the form of free Program meals, that Program officials may verify the information on the application, and that purposely providing untrue or misleading statements may result in prosecution under State or Federal criminal laws; and

* * * * *

4. In § 225.16, revise the entry for “Cooked dry beans or peas” in the table under Meat and Meat Alternates (Optional) in paragraph (d)(1) to read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) * * *

(1) * * *

Food components	Minimum amount
* * * * *	* * * * *
Meat and Meat Alternates (Optional)	
* * * * *	* * * * *
Cooked dry beans or peas ...	¼ cup.
* * * * *	* * * * *

5. In § 225.19, revise paragraphs (b), (c), (d), (e), (f) and (g) to read as follows:

§ 225.19 Regional office addresses.

* * * * *

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, NJ 08691-1598.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 61 Forsyth Street, SW, Room 8T36, Atlanta, GA 30303-3415.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 77 West Jackson Boulevard, 20th Floor, Chicago, IL 60604-3507.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5-C-30, Dallas, TX 75242-9980.

(f) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, CO 80204-3581.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108-2518.

Dated: December 21, 2000.

George A. Braley,
Acting Administrator.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV00-930-4 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Authorization of Japan as an Eligible Export Outlet for Diversion and Exemption Purposes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which authorizes Japan as an eligible export market under the diversion and exemption provisions of the Federal tart cherry marketing order (order). Previously, shipments to Canada, Mexico, or Japan did not qualify for diversion credit and could not be approved as exempt uses. The Cherry Industry Administrative Board (Board) recommended allowing shipments to Japan to qualify as exempt use shipments and to be eligible for diversion credit. The order regulates the

handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Board.

EFFECTIVE DATE: January 29, 2001.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, (301) 734-5243; Fax: (301) 734-5275, or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department or USDA) 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.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the

petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to authorize shipments of tart cherries to Japan to qualify as exempt use shipments and to be eligible for diversion credit. Currently, exports to countries other than Canada or Mexico may receive diversion credit, and may qualify as exempt shipments. Prior to the issuance of the interim final rule published June 2, 2000 (65 FR 35265), Japan was not eligible for diversion and exemption in the past because, according to the Board, tart cherry markets were well established in that country. The Board, at its March 2, 2000, meeting, recommended allowing Japan to become an eligible export outlet for diversion credit and exempt uses in order to stimulate sales to that country. This was because exports to Japan have greatly decreased industry-wide.

The order authorizes the use of volume regulation. In years when volume regulation is implemented to stabilize supplies, a certain percentage of the cherry crop is required to be set aside as restricted tonnage, and the balance may be marketed freely as free tonnage. The restricted tonnage is required to be maintained in handler-owned inventory reserve pools. Handlers in volume regulated States may fulfill their restricted tonnage requirements with diversion credits earned by diverting cherries or cherry products. Handlers are permitted to divert (at plant or with grower-diversion certificates from growers choosing not to deliver their crop) as much of their restricted percentage (reserve pool) requirements as they deem appropriate. Handlers also may divert cherries by using cherries or cherry products for exempt purposes, including the development of export markets. Presently, these markets do not include Canada and Mexico.

Section 920.62 of the order (Exemptions) provides that cherries (which are diverted in accordance with § 930.59, which are used for new product and new market development, which are used for experimental purposes, or which are used for any other purposes designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries was utilized, may be exempt from the

assessment, quality control, volume regulation, and reserve provisions of the order.

Currently, § 930.162 of the rules and regulations under the order authorizes the sale of cherries and cherry products, including the development of sales for new and different tart cherry products or the expansion of sales for existing tart cherry products, to countries other than Canada and Mexico.

When the Board initially recommended regulations for exempt uses and handler diversion in 1997-98, exports to Japan were averaging about 3.0 million pounds per season. The industry considered Japan, as well as Canada and Mexico, to be a premium markets for tart cherries, not outlets for which exemptions and diversion credit should be given. With regard to Canada and Mexico, the industry also was concerned about transshipments of lower-priced cherries because of their close proximity to the primary domestic market. In 1998-99, sales to Japan fell to 1.6 million pounds, and in 1999-00 sales further dropped to 943,000 pounds. The Board, therefore, recommended that exports to Japan be eligible for diversion and exemption. This, in the Board's opinion, would provide an incentive for handlers throughout the industry to make shipments to that country and stimulate activity.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) will allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through

group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 90 percent of the U.S. tart cherry crop, or 280.3 million pounds, was processed annually. Of the 280.3 million pounds of tart cherries processed, 63 percent were frozen, 29 percent canned and 8 percent utilized for juice. Exports to Japan in 1999–00 were 943,000 pounds.

This rule continues to authorize tart cherry shipments to Japan to qualify as exempt use shipments and to be eligible for diversion credit. The objective of this action is to stimulate and expand sales of tart cherries.

This rule is expected to benefit growers and handlers by assisting growers market a greater proportion of their crop to handlers having access to export markets. Handlers, instead of diverting at-plant or in-orchard or placing product in reserves, could ship product to Japan and receive diversion certificates that could be used to offset any restricted percentage obligations. Handlers also would benefit from this action as they would be able to process greater amounts of tart cherries, as a result of receiving more product from growers for shipment to Japan, through their facilities, thus spreading their operation costs and increasing returns to growers.

One alternative to this action considered by the Board was to disallow exemptions and diversion credit for shipments to Japan. However, this was not expected to be favorable to cherry growers and handlers throughout the production area because it might cause a further decline in the Japanese market, as occurred in 1999–00.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend them and participate in Board deliberations. Like all Board meetings, the March 2000 meeting was

a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

This rule will not impose any additional recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

An interim final rule concerning this action was published in the **Federal Register** on June 2, 2000 (65 FR 35265). Copies of the rule were mailed by the Board's staff to all Board members and cherry handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided a 60-day comment period which ended August 1, 2000. Two comments were received. One comment was received from the Oregon Farm Bureau and the other was received from a tart cherry grower and handler in Oregon.

The two commenters opposed making Japan an eligible export market under the diversion and exemption provisions of the order. Prior to the issuance of the interim final rule, shipments to Canada, Mexico, or Japan did not qualify for diversion credit and could not be approved as exempt uses. Japan was considered a premium market similar to the domestic market. The markets in Canada and Mexico also were considered similar to the domestic market. This was because these markets were in close proximity to the United States and the industry was concerned about transshipments of lower-priced cherries if shipments to these markets were eligible for diversion credit in meeting volume control obligations.

Under the volume control mechanism, the industry has established a price system with diversion credit shipments commanding

lower prices than those shipped domestically. Handlers purchase the free percentage portion of the grower deliveries which can be marketed, and pay low prices for the excess cherries which are disposed of under the diversion and exemption provisions of the order. The cherries that are not disposed of in this manner are held in reserve. Some States in the production area, like Oregon, are not subject to volume regulation and handlers purchase all of the marketable production delivered by their growers. Generally, higher quality and condition cherries return more money to the grower.

Total U.S. exports to Japan have fallen from 3.2 million pounds in 1996–97 to 1.6 million pounds in 1998–99. During the 1999–00 crop year, total exports to Japan fell further to 943,000 pounds. This represents a 70 percent decrease in exports from 1996–97. Under the interim final rule, shipments to Japan qualify as exempt use shipments and are eligible for diversion credit. This is expected to stimulate shipments to Japan industry-wide.

Both commenters claim that Japan is a well-established and premium market which should not be eligible for diversion credit. The buyers in Japan are willing to pay a premium for cherries of the quality and condition they desire. One of the commenters, stated that its customers consistently pay top-dollar, and are rewarded with the very best his firm can offer. This commenter indicated that his firm has not experienced a comparable sense of "premium" in its exports to Canada. Nonetheless, the industry concerns on the transshipment of lower-priced cherries to the United States weigh heavily in considering Canada a primary market under the order. Oregon comprised about 1.4 percent of the domestic production during the last three shipping seasons (1997–1999).

Both commenters agree that exports to Japan have fluctuated over the years, but contend that the fluctuations are a function of the size of the Oregon crop and not a softening of the market. The goal of the Board in recommending this action was to stimulate shipments to Japan by providing growers and handlers from other parts of the production area with a means of competing in Japan. The intent of the action is not to negatively impact the Oregon growers and handlers shipping to Japanese markets, but to expand markets in Japan in the interest of the entire U.S. tart cherry industry. Although the action is expected to enable firms from the other parts of the production area to gain a foothold in the

price conscious markets in Japan, it is not expected to prevent the firms in Oregon from supplying the needs of their quality conscious customers, willing to pay premium prices.

Shipments to markets under the diversion and exemption provisions of the order can be sold at lower prices than those shipped domestically because growers are paid less for the tart cherries subject to the diversion and exemption provisions. Because cherries produced in Oregon are not subject to volume regulation under the order, tart cherries are not subject to the diversion credit and exemption provisions of the order, and growers are paid for all of the cherries delivered.

The primary purpose of the order is to strengthen marketing conditions in the primary domestic market through volume regulation. In implementing volume controls and the related procedures, the Department's goal is to apply the requirements uniformly in as equitable a manner as possible, and to assure that any regulatory action is in the interest of the entire industry covered under the order, not just one segment or part of the industry. Authorizing Japan as an eligible export market under the diversion and exemption provisions of the order is expected to help the industry further develop the Japanese market. This is in the long term interest of all growers and handlers of tart cherries covered under the order.

In view of this, these comments are denied.

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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that finalizing this interim final rule, without modifications, as published in the **Federal Register** (65 FR 35265), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 65 FR 35265 on June 2, 2000, is adopted as a final rule without change.

Dated: December 21, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 210, 212, 235, 241, and 245a

[INS No. 2004-99]

RIN 1115-AF53

Clarification of Parole Authority

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations concerning the authority to grant the parole of aliens from Service custody by specifically identifying the scope of that authority. This action is being taken to clarify which officials are authorized by the Attorney General, acting through the Commissioner, to grant parole from Service custody.

DATES: *Effective Date:* This interim rule is effective January 29, 2001.

Comment Date: Written comments must be submitted on or before February 26, 2001.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2004-99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Yvette M. LaGonterie, Office of International Affairs, Parole Branch, 111 Massachusetts Avenue NW., ULLICO

Building, third floor, Washington, DC 20001, telephone (202) 305-2670.

SUPPLEMENTARY INFORMATION:

How Does This Rule Amend the Existing Regulation?

Section 212(d)(5)(A) of the Immigration and Nationality Act (Act) gives the Attorney General discretion to parole into the United States, temporarily, for urgent humanitarian reasons or significant public benefit, any alien applying for admission to the United States. While the power to delegate this authority clearly flows from the Attorney General through the Commissioner to her designees, § 212.5 appears to delegate this parole authority solely to the district director (DD) and the chief patrol agent (CPA). This rule amends § 212.5 to bring it into conformity with the delegation of authority provisions contained in §§ 2.1 and 103.1. This rule adds a new paragraph (a) to § 212.5 which specifically states that the scope of the authority to grant parole flows from the Commissioner through her designees, so that the Deputy Commissioner, the Executive Associate Commissioner (EAC) for Field Operations, regional directors (RD) and other designees have the power to grant parole.

Why is This Rule Necessary?

This rule is intended to clarify the existing authority of Service officials to grant parole. Some have interpreted § 212.5 to mean that the authority to grant parole is limited to the DD and the CPA. This interpretation is erroneous. See *Matter of ACCARDI*, 14 I. & N. Dec. 367 (BIA 1973). Under section 212(d)(5) of the Act, parole authority is vested with the Attorney General. It is well established under both precedent decisions and § 2.1 that the Attorney General has delegated authority to the Commissioner to implement and enforce the provisions of the Act, but that the Attorney General retains that authority. Section 103.1 further establishes the power of the Commissioner to delegate her authority to subordinate officials, so that the authority to enforce the Act flows from the Commissioner to her designees, but without divesting the Commissioner or her subordinates of the delegated authority. The specific reference to the DD and the CPA in § 212.5 presumes a delegation of authority from the Commissioner through the chain of command set forth in § 103.1. To clarify this delegation of authority and to avoid an erroneous interpretation, § 212.5 will be amended to specifically recognize that authority. Therefore, the authority to parole aliens under § 212.5 is