

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 2

#### Agricultural Research Service

#### 7 CFR Part 520

RIN 0524-AA63

#### Revision of Delegations of Authority

**AGENCIES:** Office of the Secretary, USDA; Agricultural Research Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule makes a number of miscellaneous amendments to delegations of authority by adding new authorities, correcting references, and removing obsolete authorities.

**DATES:** This rule is effective July 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lockhart; Senior Policy Specialist; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue SW.; Washington, DC 20250-2299; Voice: 202-559-5088; Fax: 202-401-7752; Email: [mlockhart@nifa.usda.gov](mailto:mlockhart@nifa.usda.gov).

#### SUPPLEMENTARY INFORMATION:

#### Delegations of Authority

This rule makes changes to existing delegations in 7 CFR parts 2 and 520. The delegations of authority to the Under Secretary for Research, Education, and Economics (REE) in 7 CFR 2.21 and to the Director of the National Institute of Food and Agriculture (NIFA) in 7 CFR 2.66 are amended to reflect the delegation of the authority of the Secretary of Agriculture (Secretary) in section 405 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C.

7625), as added by section 209(b) of the FDA Food Safety Modernization Act, Public Law 111-353, to carry out a competitive grant program within NIFA to provide food safety training, education, extension, outreach, and technical assistance to owners and operators of farms, small food processors, and small fruit and vegetable merchant wholesalers.

The authorities to approve the selection of State directors of extension and memoranda of understanding (MOUs) between land-grant universities and USDA, related to cooperative extension programs, reserved to the Secretary in 7 CFR 2.21(b)(1)(v) and (vi), respectively, are removed. The MOUs, which required USDA approval of extension directors/administrators, have been terminated by USDA due to obsolescence.

The delegations of authority to the Administrator of the National Agricultural Statistics Service in 7 CFR 2.68 are amended to reflect the delegation of authority, currently delegated to the Under Secretary for REE in 7 CFR 2.21(a)(xviii), to enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects, including agricultural statistical survey activities (7 U.S.C. 450a).

Finally, this rule amends Agricultural Research Service (ARS) regulations at 7 CFR 520.4 to correct a reference to the ARS official with delegated responsibility for the establishment of procedures and coordination necessary to carry out the policies and provisions of the National Environmental Policy Act within ARS.

#### Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Order 12866. This action is not a rule as defined by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Fairness Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, or the Congressional Review Act, 5 U.S.C. 801 *et seq.*, and thus is exempt

from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Parts 2 and 520

Authority delegations (Government agencies), Agricultural research, Agricultural extension, Federal assistance, Food and agricultural sciences.

Title 7 of the Code of Federal Regulations is amended accordingly as set forth below:

#### PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949-1953 Comp., p. 1024.

#### Subpart C—Delegations of Authority to the Deputy Secretary, Under Secretaries, and Assistant Secretaries

■ 2. Amend § 2.21 as follows:

- a. Add paragraph (a)(1)(ccv); and
- b. Remove paragraphs (b)(1)(v) and (vi).

The addition reads as follows:

#### § 2.21 Under Secretary for Research, Education, and Economics.

(a) \* \* \*

(1) \* \* \*

(ccv) Administer a competitive grant program for national food safety training, education, extension, outreach, and technical assistance (7 U.S.C. 7625).

\* \* \* \* \*

#### Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

■ 3. Amend § 2.66 by adding paragraph (a)(160) to read as follows:

#### § 2.66 Director, National Institute of Food and Agriculture.

(a) \* \* \*

(160) Administer a competitive grant program for national food safety training, education, extension, outreach, and technical assistance (7 U.S.C. 7625).

\* \* \* \* \*

■ 4. Amend § 2.68 by adding paragraph (a)(12) to read as follows:

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) \* \* \*

(12) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects, including agricultural statistical survey activities (7 U.S.C. 450a).

\* \* \* \* \*

PART 520—PROCEDURES FOR IMPLEMENTING NATIONAL ENVIRONMENTAL POLICY ACT

■ 5. The authority citation for part 520 continues to read as follows:

Authority: National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321 et seq.; E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR 1500–1508.

■ 6. Amend § 520.4 by revising paragraph (a) to read as follows:

§ 520.4 Responsibilities.

(a) Administrator. The Administrator is responsible for environmental analysis and documentation required for compliance with the provisions of NEPA and related laws, policies, plans, programs, and projects. The ARS Deputy Administrator for Natural Resources has been delegated responsibility for the establishment of procedures and coordination necessary to carry out the policies and provisions of NEPA.

\* \* \* \* \*

Dated: June 29, 2012.

Thomas J. Vilsack, Secretary.

[FR Doc. 2012-16610 Filed 7-6-12; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS-FV-11-0092; FV12-930-1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Increasing the Primary Reserve Capacity and Revising Exemption Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the primary inventory reserve capacity and the exemption provisions applicable to handler diversion activities prescribed under the marketing order for tart cherries (order). 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 Cherry Industry Administrative Board (Board). This action increases the volume of tart cherries that can be placed in the primary inventory reserve from 50 million pounds to 100 million pounds and revises exemption provisions by limiting diversion credits for new market development and market expansion activities to one year. These changes are intended to facilitate sales and lessen the impact of market expansion activities on volume restriction calculations.

DATES: Effective Date: July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or Email: Jennie.Varela@ams.usda.gov or Christian.Nissen@ams.usda.gov.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 930, as amended (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." The 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 USDA 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, USDA 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 USDA'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 revises the primary inventory reserve capacity and the exemption provisions applicable to handler diversion activities prescribed under the order. This action increases the volume of tart cherries that can be placed in the primary inventory reserve from 50 million pounds to 100 million pounds and revises exemption provisions by limiting diversion credits for new market development and market expansion activities to one year. These changes are intended to facilitate sales and lessen the impact of new market development and market expansion activities on volume restriction calculations. These changes were recommended by the Board at its meetings on September 15, 2011, and November 2, 2011, respectively.

Section 930.55 of the order provides authority for the establishment of a primary inventory reserve as part of the order's volume control provisions. Section 930.50(i) of the order establishes a cap of 50 million pounds on the primary inventory reserve, but provides authority to raise that limit if necessary, provided that any recommendation for change is made by the Board on or before September 30 to become effective for the following crop year.

Section 930.59 of the order authorizes handler diversion. When volume regulation is in effect, handlers may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. These eligible diversion activities include, in part, use for new market development and market expansion activities.

Section 930.159 of the order's administrative rules specifies methods of handler diversion, including using cherries or cherry products for exempt purposes prescribed under § 930.162.