

**§ 890.1305 Termination and cancellation.**

(a) If an enrolled eligible beneficiary moves out of a demonstration area, the enrollment of the eligible beneficiary and all family members will be terminated. If an enrolled eligible beneficiary moves to an area located within a demonstration area, he or she will continue to be eligible to participate in the demonstration project. If the eligible beneficiary was enrolled prior to the move in an HMO that does not serve the new demonstration area, the eligible beneficiary will have an opportunity to select a new health plan offered by a carrier participating in the demonstration project in the new area. If the eligible beneficiary was enrolled in a fee-for-service plan prior to the move and moves to another area that is within an existing demonstration area, the eligible beneficiary can maintain his or her current coverage.

(b) If an enrolled eligible beneficiary disenrolls, cancels, or terminates enrollment for any reason, he or she will not be eligible to reenroll in the demonstration project. Once coverage ends, eligible beneficiaries and all family members have the right to resume all of the benefits to which they are entitled to under title 10 of the United States Code. Medicare-covered eligible beneficiaries and their eligible family members who had Medigap policies prior to their enrollment in the demonstration project are entitled to reinstate that coverage under the conditions stated in section 1108(l) of title 10, United States Code.

(c) Eligible beneficiaries and their family members are eligible for Temporary Continuation of Coverage (TCC) under the conditions and for the durations described in subpart K or until the end of the demonstration project, whichever occurs first. The effective date of TCC for eligible beneficiaries or their eligible family members will be the day after other coverage under this subpart ends. Eligible beneficiaries or their eligible family members selecting TCC must enroll in a health plan offered by a carrier participating in the demonstration project. If an eligible beneficiary or eligible family member enrolled in DoD TCC moves from a demonstration project area, coverage ends. DoD TCC enrollees will be responsible for paying the entire DoD premium rate (OPM's approved net-to-carrier DoD rate plus 4 percent for contingency and administration reserves) plus 2 percent of this premium rate for administration of the program. DoD will make arrangements to collect premiums plus the 2 percent

administrative charge from eligible beneficiaries and forward them to OPM's Employees Health Benefits Fund. OPM will establish procedures for receiving the 2 percent administrative payment into the Employees Health Benefits Fund and making this amount available to DoD for administration of the program.

(d) Enrolled eligible beneficiaries are not eligible for the temporary extension of coverage and conversion opportunities described in subpart D of this part.

**§ 890.1306 Government premium contributions.**

The Secretary of Defense is responsible for the government contribution for enrolled eligible beneficiaries and family members. The government contribution toward demonstration project premium rates will be determined in accordance with subpart E of this part.

**§ 890.1307 Data collection.**

Each carrier will compile, maintain, and when requested by OPM or DoD, report data on its plan's experience necessary to produce reports containing the following information and analysis:

(a) The number of eligible beneficiaries who elect to participate in the demonstration project.

(b) The number of eligible beneficiaries who elected to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate.

(c) The costs of health benefits charges and the costs (direct and indirect) of administering the benefits and services provided to eligible beneficiaries who elect to participate in the demonstration project as compared to similarly situated enrollees in the FEHB Program.

(d) Prescription drug costs for demonstration project beneficiaries.

**§ 890.1308 Carrier participation.**

(a) All carriers who participate in the FEHB Program and provide benefits to enrollees in the geographic areas selected as demonstration project areas must participate in the demonstration project, except as provided for in paragraphs (b), (c), and (d) of this section.

(b) Carriers who have less than 300 FEHB enrollees may, but are not required to, participate in the demonstration project.

(c) Carriers may, but are not required to, participate in the demonstration project if their service area overlaps a small portion (as determined by OPM) of a demonstration project geographic area.

(d) Carriers offering fee-for-service plans with enrollment limited to specific groups will not participate in the demonstration project.

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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 00-034-1]

**Plum Pox**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are quarantining part of Adams County, PA, due to the detection of plum pox in that region and are restricting the interstate movement of certain articles from the quarantined area that present a risk of transmitting plum pox. This action is necessary on an emergency basis to prevent the spread of plum pox to noninfested areas of the United States.

**DATES:** This interim rule is effective on June 2, 2000. We invite you to comment on this docket. We will consider all comments that we receive by August 1, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00-034-1 Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 00-034-1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, USDA,

APHIS, PPQ, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734-8899.

#### SUPPLEMENTARY INFORMATION:

##### Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Plum Pox," composed of new §§ 301.74 through 301.74-4 and referred to below as the regulations. These regulations quarantine portions of Adams County, PA, due to the detection of plum pox and restrict the interstate movement of certain articles from the quarantined area that present a risk of transmitting plum pox.

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. Plum pox virus is transmitted locally by a variety of aphid species as well as by budding and grafting with infected plant material. It spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts. The strain of plum pox detected in Adams County, PA—the D strain—is not known to be transmitted by seed or fruit. This particular strain in Pennsylvania is also not known to infect cherry. There are no effective methods for treating trees or other plant material infested with plum pox. There are also no effective treatments to prevent the onset of plum pox other than eradication of nearby plant material already identified as infected. In Europe, plum pox has been present for a number of years and is considered to be the most serious disease affecting susceptible *Prunus* varieties.

Recent delimiting surveys of orchards have established that portions of Adams County, PA, in the area of Latimore Township and Huntington Township are infested with plum pox. Prior to this discovery, plum pox had not been detected in the United States.

Officials of the Animal and Plant Health Inspection Service (APHIS) and the Pennsylvania Department of Agriculture (PDA) have begun an intensive survey and eradication program in and around the infested area. The PDA has also instituted a quarantine encompassing Latimore and Huntington Townships in Adams County, PA, the area where plum pox is now known to be present. The PDA quarantine prohibits any movement of

stone fruit trees (including nursery stock) and stone fruit budwood within the quarantined area as well as movement of these same regulated articles out of the quarantined area into other regions of Pennsylvania. There is no restriction on the movement of fruit since there is no evidence that the virus is spread from the fruit. Federal regulations are necessary in order to restrict the interstate movement of these same regulated articles and prevent the spread of plum pox to noninfested areas of the United States. This interim rule establishes those Federal regulations, which are described below.

##### *Section 301.74—Restrictions on Interstate Movement of Regulated Articles*

Section 301.74 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

##### *Section 301.74-1—Definitions*

Section 301.74-1 contains definitions of the following terms: *Administrator*, *Animal and Plant Health Inspection Service*, *Departmental permit*, *infestation (infested, infected)*, *inspector*, *interstate*, *moved (move, movement)*, *person*, *Plant Protection and Quarantine*, *plum pox*, *quarantined area*, *regulated article*, and *State*.

##### *Section 301.74-2—Regulated Articles*

Certain articles present a significant risk of spreading plum pox if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) and (b) of § 301.74-2 list the following as regulated articles:

- All plant material and plant parts of *Prunus* (stone fruit) species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*, except for seeds and fruit that is free of leaves and other plant parts. This includes, but is not limited to, trees, seedlings, root stock, budwood, branches, twigs, and leaves.

- Any other product or article that an inspector determines to present a risk of spreading plum pox when the inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

##### *Section 301.74-3—Quarantined Areas*

Paragraph (a) of § 301.74-3 provides the criteria for the inclusion of States, or portions of States, in the list of quarantined areas. Any State or portion of a State in which plum pox is detected through inspection and laboratory

testing, or in which the Administrator has reason to believe that plum pox is present, will be listed as a quarantined area. In addition, an area will be designated as a quarantined area when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which plum pox has been detected.

Paragraph (a) of § 301.74-3 also provides that we will designate less than an entire State as a quarantined area if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and that the designation of less than the entire State as a quarantined area will prevent the interstate spread of plum pox.

The boundary lines that delimit the portion of a State to be designated as a quarantined area may vary due to factors such as the location of host material that is a source of infestation, nearby transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of transmission of plum pox, and the availability of clearly identifiable lines to serve as boundaries.

We have determined that it is not necessary to designate the entire State of Pennsylvania as a quarantined area because plum pox has not been detected in areas outside of Adams County, PA. In addition, Pennsylvania has adopted and is enforcing restrictions on the intrastate movement of regulated articles, and those restrictions are substantially the same as those we are imposing on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the previous paragraph, we have designated the following as quarantined areas: Latimore Township and Huntington Township, both of which are located in Adams County, PA.

Paragraph (b) of § 301.74-3 provides that we may temporarily designate any other area in a State as a quarantined area should we determine that the nonquarantined area meets the criteria for designation as a quarantined area described in § 301.74-3(a). In such cases, we will give the owner or person in possession of the area a copy of the regulations along with written notice of the area's temporary designation as a quarantined area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the interstate spread of plum pox during the interval between the time of detection and the

time a document establishing the quarantined area can be made effective and published in the **Federal Register**. If an area's designation as a temporary quarantined area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as is practicable.

*Section 301.74-4—Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas*

This section prohibits the interstate movement of regulated articles from a quarantined area with two exceptions. First, an article can be moved by APHIS or another agency of the U.S. Department of Agriculture for experimental or scientific purposes. Such articles must be moved in accordance with a Departmental permit issued by the Administrator under conditions specified on the permit to prevent the spread of plum pox.

Second, articles which originate from outside the quarantine area may pass through the quarantine area as long as the shipment includes a waybill that indicates the point of origin. Such articles that are merely passing through the quarantined area must be moved in an enclosed vehicle or completely covered to prevent access by aphids while traveling through the quarantined area. Such articles must not be uncovered, unpacked, or unloaded while in the quarantined area.

**Emergency Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the spread of plum pox to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule quarantines part of Adams County, PA, due to the detection of plum pox and restricts the interstate movement of certain articles from the quarantined area that present a risk of transmitting the strain of plum pox. This action is necessary on an emergency basis to prevent the spread of plum pox to noninfested areas of the United States.

The overall economic effect of this interim rule is expected to be small. The quarantine to be imposed on Latimore Township and Huntington Township prohibits the movement of most stone fruit budwood, root stock, and other plant material from the quarantined area. Since the fruit itself is not a vector of the disease, the quarantine imposes no restrictions on the movement of fruit out of the quarantined area. Therefore, growers in the quarantined area are able to sell and move their fruit production without restriction.

The quarantine does prohibit the movement of susceptible budwood and root stock. However, stone fruit growers move small quantities of plant material for commercial purposes. In 1999, there was a movement of 700 bud sticks (worth about \$1 apiece) out of the quarantined area. In some years, there have been no movements.

The prohibition on the movement of susceptible plant material would also affect nurseries. There is one small nursery in the quarantined area. However, it does very little, if any, business in the products subject to regulation under the quarantine. There are two other nurseries within Adams County, PA, but outside the quarantined area that have been affected by the plum pox outbreak, although not by these regulations. Because these nurseries received plant material from the quarantined area, trees from their spring 2000 and spring 2001 peach, nectarine, plum, and apricot crop are unsalable. The losses are estimated to total \$700,000. In addition, these two nurseries have also had to alter their operations due to their proximity to and association with the quarantined area where plum pox has been detected.

**Effect on Small Entities**

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their

rules on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as "small" if it has less than \$500,000 in annual receipts.

Within the quarantined area of Latimore Township and Huntington Township, there are seven peach, plum, and nectarine producers with orchards totaling approximately 800 acres. Four of these producers are known to have orchards where plum pox has been detected. None of the producers in the quarantined area would be considered small under SBA guidelines. In Adams County as a whole, there are 124 stone fruit growers. Of these, about two-thirds would be considered small under SBA guidelines.

There is one small nursery in the quarantined area. However, it does very little, if any, business in products subject to regulation under the quarantine. There are two nurseries in Adams County, PA, but outside the quarantined area, which have been affected indirectly by their proximity to plum pox detection in the quarantined area. Neither of these nurseries outside the quarantined area are considered small under SBA guidelines. Neither is affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for the plum pox program in Pennsylvania. The assessment provides a basis for the conclusion that implementing a quarantine to prevent the spread of plum pox to noninfested areas of the United States under the conditions specified in the interim rule

will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

#### Paperwork Reduction Act

This interim 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 Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Part 301 is amended by adding a new “Subpart Plum Pox,” §§ 301.74 through 301.74–4, to read as follows:

##### Subpart—Plum Pox

Sec.

301.74 Restrictions on interstate movement of regulated articles.

301.74–1 Definitions.

301.74–2 Regulated articles.

301.74–3 Quarantined areas.

301.74–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

##### Subpart—Plum Pox

##### § 301.74 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

##### § 301.74–1 Definitions.

The following definitions apply to this subpart.

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Animal and Plant Health Inspection Service.** The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

**Departmental permit.** A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.74–4 of this subpart.

**Infestation (infested, infected).** The presence of plum pox or circumstances or symptoms that makes it reasonable to believe that plum pox is present.

**Inspector.** Any employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

**Interstate.** From any State into or through any other State.

**Moved (move, movement).** Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

**Person.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

**Plant Protection and Quarantine.** Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

**Plum pox.** A plant disease caused by plum pox potyvirus that can affect many

*Prunus* (stone fruit) species, including, but not limited to, almond, apricot, nectarine, peach, plum, and sweet and tart cherry. The strain of plum pox in Pennsylvania does not affect cherry trees.

**Quarantined area.** Any State, or any portion of a State, listed in § 301.74–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.74–3(b) of this subpart.

**Regulated article.** Any article listed in § 301.74–2(a) or otherwise designated as a regulated article in accordance with § 301.74–2(b), based on its susceptibility to the form or strain of plum pox detected in the quarantined area.

**State.** The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

##### § 301.74–2 Regulated articles.

The following are regulated articles:

(a) All plant material and plant parts of *Prunus* (stone fruit) species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*, except for seeds and fruit that is free of leaves and other plant parts. This includes, but is not limited to, trees, seedlings, root stock, budwood, branches, twigs, and leaves.

(b) Any other product or article that an inspector determines to present a risk of spreading plum pox when the inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

##### § 301.74–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which plum pox has been detected through inspection and laboratory testing, or in which the Administrator has reason to believe that plum pox is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which plum pox has been detected. Less than an entire State will be designated as a quarantined area if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

<sup>1</sup> Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd AND 150ff).

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of plum pox.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which the quarantine designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

#### Pennsylvania

*Adams County.* The townships of Latimore and Huntingdon.

#### **§ 301.74-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

The interstate movement of any regulated article from a quarantined area<sup>2</sup> is prohibited except when:

(a) The regulated article is moved by the United States Department of Agriculture:

(1) For an experimental or scientific purpose;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plum pox; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container; or

(b) The regulated article originated outside the quarantined area and:

(1) Is moved in an enclosed vehicle or is completely enclosed by a covering (such as canvas, plastic, or other closely woven cloth) adequate to prevent access by aphids or other transmission agents

of plum pox while in the quarantined area;

(2) The regulated article's point of origin is indicated on the waybill; and

(3) The regulated article must not be uncovered, unpacked, or unloaded while moving through the quarantined area.

Done in Washington, DC, this 30th day of May 2000.

**William R. DeHaven,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00-13931 Filed 6-1-00; 8:45 am]

**BILLING CODE 3410-34-U**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Docket No. FV00-930-4 IFR]

#### **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:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes Japan as an eligible export market under the diversion and exemption provisions of the Federal tart cherry marketing order (order). Currently, shipments to Canada, Mexico, or Japan do not qualify for diversion credit and may 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.

**DATES:** Effective June 5, 2000; comments received by August 1, 2000 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, Fax: (202) 720-5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket 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.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 5D03, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (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

<sup>2</sup> Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.