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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206-AG 62

Bringing Nonpermanent Excepted Positions Into the Competitive Service

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations governing retention of employees whose excepted positions are brought into the competitive service to permit the employees to receive term appointments if their excepted appointments had time limits longer than 1 year. This will avoid hardship to the employees, who could otherwise be retained only as temporary employees without benefits.

EFFECTIVE DATE: August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606-0830, or fax (202) 606-0390.

SUPPLEMENTARY INFORMATION: Civil Service Rule III (5 CFR 3.1) authorizes OPM to prescribe conditions under which "a person who occupies a permanent position when it is placed in the competitive service * * * or is otherwise made subject to competitive examination" may acquire a competitive status. OPM's regulations implementing this authority are found in 5 CFR 315.701, 316.701, and 316.702.

Currently, those regulations permit nonpermanent employees whose positions are brought into the competitive service to be retained only under temporary appointments limited to 1 year or less. However, some nonpermanent excepted appointments are more comparable to term appointments, i.e., they are made for periods longer than 1 year and confer

eligibility for within-grade increases, promotions and reassignments, and retirement and insurance benefits.

On April 7, 1995 (60 FR 17655), we proposed regulations to permit employees holding such appointments to receive noncompetitive term appointments if their positions are brought into the competitive service. We received no substantive comments on the proposed regulations and are adopting them as final regulations with no change. The regulations also make editorial changes and remove obsolete references to the Federal Personnel Manual.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects in 5 CFR Part 316

Government employees.
Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM is amending 5 CFR part 316 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, and E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

2. In § 316.701, paragraph (c) is revised to read as follows:

§ 316.701 Public or private enterprise taken over by the Government.

* * * * *
(c) An agency may retain an employee under paragraph (a) of this section in a position that it determines is noncontinuing under a temporary appointment. That appointment may be made for a period not to exceed 1 year and will be subject to the time limits set out in § 316.402.

3. In § 316.702, paragraphs (b)(1) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency may convert that employee's appointment to career or career-conditional under § 315-701.

* * * * *

(c) An employee who was serving under an excepted appointment limited to 1 year or less may be retained as a temporary employee under paragraph (a) of this section until the scheduled expiration date of the employee's excepted appointment. Extension of the employee's temporary appointment beyond that date will be subject to the provisions of § 316.402.

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The appointment will be subject to all conditions generally applicable to term appointments and may be extended up to the maximum limit for term appointments established under § 316.301. Service under the employee's excepted appointment counts against the maximum limit for the term appointment.

[FR Doc. 95-18709 Filed 7-31-95; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 94-069-2]

Unshu Oranges From the Republic of Korea

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation and interstate movement of citrus fruit to allow, under certain conditions,

Unshu oranges grown in citrus-canker free zones on Cheju Island, Republic of Korea, to be imported into the United States and moved interstate. This action relieves restrictions on the importation into and distribution within the United States of Unshu oranges from Cheju Island, Republic of Korea, without presenting a significant risk of spreading citrus canker.

EFFECTIVE DATE: July 24, 1995.

FURTHER INFORMATION CONTACT: Mr. Peter Grosser or Mr. Frank Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737-1236, (301) 734-6799.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease that affects citrus, and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in the Republic of Korea infects the twigs, leaves, and fruit of a wide spectrum of *Citrus* species.

The regulations in 7 CFR 319.28 (referred to below as the regulations) prohibit the importation of citrus from Eastern and Southeastern Asia, Japan, Brazil, Paraguay, and other designated areas, except for Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in citrus canker-free areas in Japan. After meeting certain growing, packing, and inspection requirements, Japanese Unshu oranges may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States. Also, under the regulations in 7 CFR 301.83, Unshu oranges grown in Japan are prohibited from being moved interstate from any quarantined area into or through any nonquarantined area of the United States; all areas of the United States, except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States, are quarantined.

On March 29, 1995, we published in the **Federal Register** (60 FR 16067-16069, Docket No. 94-069-1) a proposal to amend the regulations by allowing the importation of Unshu oranges from Cheju Island, Republic of Korea, under the same conditions that apply to Unshu oranges grown in Japan. We proposed to allow these importations at the request of the Ministry of Agriculture, Forestry and Fisheries of the Republic of Korea, and after the Animal and Plant Health

Inspection Service (APHIS) conducted pest risk assessments that indicated that Unshu oranges from Cheju Island, Republic of Korea, could be imported into the United States under the conditions proposed without significant plant pest risk. Copies of the pest risk assessments are available, upon written request, from the person listed under **FOR FURTHER INFORMATION CONTACT**.

We solicited comments concerning our proposal for 30 days ending April 28, 1995. We received three comments by that date. They were from a state department of agriculture and two industry groups. One comment supported the proposal as written. Two commenters were both concerned with the potential pest risk and the replacement of plant pathologists with plant protection officers. The comments are discussed below by topic.

Pest Risk

Two commenters expressed concerns that the pest risk review was inadequate. They both felt that too much emphasis was placed on comparisons to Japan and the implied similarity in the growing areas. One commenter agreed that our experience with Japan showed a minimal threat from the importation of Unshu Oranges from Japan. However, that commenter was concerned about the lack of experience that we have with the Republic of Korea and recommended that we should only permit Unshu oranges from the Republic of Korea to be imported into greatly restricted areas of the United States, as was done many years ago for Unshu oranges from Japan. The other commenter was concerned about the occurrence of citrus canker on Cheju Island, Republic of Korea. Both commenters were concerned about the interception of black spot on Unshu oranges from the Republic of Korea.

The regulations in 7 CFR 319.28(b) detail extensive safeguards on the growing, packing, and inspection of Unshu oranges exported from Japan into the United States. These safeguards also will apply to Unshu oranges imported from the Republic of Korea. Recent pest risk assessments for Unshu oranges from Japan and the Republic of Korea have shown that these safeguards will prevent the introduction of citrus canker and other citrus diseases from Unshu oranges imported into the United States from both Japan and Cheju Island, Republic of Korea.

Our recommendation to permit entry under specified conditions was based on literature surveys for plant pests, the pest list provided by Korea, records of pest interceptions at U.S. ports, surveys conducted by Korea, and two on-site

surveys conducted by APHIS. We also used our experience with the success of the safeguards used in Japan. We reviewed the evidence gathered from the sources mentioned above to determine what pests we might encounter. Although, citrus canker does occur in the Republic of Korea, one of our requirements is that the Unshu oranges must be grown and packed in canker-free export areas. These export areas must also be surrounded by a 400-meter-wide canker-free buffer zone in which only certain varieties of citrus may be grown. These safeguards, sterilizations, and other precautions, are sufficient to ensure the Unshu oranges are canker-free.

The comment about black spot of citrus disease referred to interceptions of black spot on Unshu oranges from the Republic of Korea. Citrus fruit from the Republic of Korea has been prohibited entry into the United States, therefore, we have no interception records of black spot from export quality fruit. Interceptions of fruit with black spot, referred to by the commenter, were from baggage and therefore may or may not have been on fruit produced in the Republic of Korea. Evidence of the occurrence of black spot in the Republic of Korea is inconclusive. Quarantine officials from the National Plant Quarantine Service of the Republic of Korea have stated that the disease has not been detected in their surveys. However, even if black spot is present in the Republic of Korea, we have determined that the safeguards provided for in the regulations will prevent the introduction of citrus-canker and other citrus diseases such as black spot into the United States from Unshu oranges from the Republic of Korea. Therefore, we are not making any changes based on this comment.

One commenter was concerned that no workplan was available to verify the Republic of Korea's ability to comply with the requirements for certification.

A workplan is an agreement that identifies both countries' responsibilities for preclearance programs. Workplans for the importation into the United States of fruits and vegetables under preclearance programs are implemented prior to commencement of a preclearance program. These workplans are not drafted or evaluated until a proposed rule has been published in the **Federal Register**. A workplan between APHIS and the Republic of Korea's plant protection services has been agreed to and will be implemented soon. Therefore, we are not making any changes based on this comment.

Plant Protection Officers

Two commenters were concerned about the replacement of plant pathologists with plant protection officers. They felt that the required inspections should continue to be performed by qualified plant pathologists. One commenter believed that plant protection officers might accurately identify canker symptoms, but that only trained plant pathologists could detect the incidence of other diseases, such as black spot, on fruit presented for inspection. It is our experience that plant protection officers can be trained to detect these diseases in the field, and that requiring plant pathologists to inspect the fruit is unnecessary.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Unshu oranges from Korea will begin soon. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

This final rule allows Unshu oranges grown on Cheju Island, Republic of Korea, to be imported into and through 45 States after meeting certain requirements.

Unshu oranges are imported for a small market in the United States and sell for two to three times the price of

the domestically grown Satsuma tangerines, a citrus fruit similar to the Unshu orange. Imported Unshu oranges are available for only a short period each year, from early November into mid-January.

In the 1992–93 growing season, domestic producers grew approximately 362 million pounds of tangerines in Arizona, California, and Florida. We estimate annual domestic production of Satsuma tangerines to be about 1.9 million pounds, 0.52 percent of total domestic tangerine production.

We anticipate that following the promulgation of this rule, the Republic of Korea initially could export about 1.1 million pounds of Unshu oranges to the United States and increase this amount to around 3.3 to 4.4 million pounds within a few years. While 4.4 million pounds of imported Unshu oranges from the Republic of Korea would only amount to 1.2 percent of the total domestic tangerine production, it would constitute over twice the annual domestic production of Satsuma tangerines. Again, however, these imported Unshu oranges could cost up to three times as much as domestically produced Satsuma tangerines.

The aggregate economic impact of this rule is expected to be positive. U.S. consumers will benefit from a greater availability of Unshu oranges. U.S. importers will also benefit from a greater availability of Unshu oranges to import.

In the course of rulemaking, if we had come across evidence indicating that importation of Unshu oranges from the Republic of Korea would pose a significant risk of plant pest introduction, we would have considered either developing alternative requirements regarding that importation or continuing to prohibit the importation of Unshu oranges from the Republic of Korea. However, our pest risk assessments and our review of public comments on the proposal indicated that importation of Unshu oranges from the Republic of Korea would pose no significant risk of plant pest introduction.

Executive Order 12778

This rule allows Unshu oranges to be imported into the United States from Cheju Island, Republic of Korea. State and local laws and regulations regarding Unshu oranges imported under this rule will be preempted while the fruit is in foreign commerce. Fresh Unshu oranges are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign

commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule; and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

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

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 are amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.83 [Amended]

2. In § 301.83, paragraph (a) is amended by adding the phrase “or on Cheju Island, Republic of Korea,” immediately following “Japan”.

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.28 [Amended]

4. Section 319.28 is amended as follows:

- a. Paragraph (a)(1) is amended by adding the phrase “the Republic of Korea,” immediately following the phrase “Japan and adjacent islands,”.
- b. In paragraph (b), the introductory text is amended by adding the phrase “or on Cheju Island, Republic of Korea,” immediately following “Japan”.
- c. In paragraph (b)(1), the first sentence is amended by removing the phrase “Japanese Plant Protection

Service" and adding the phrase "plant protection service of the country of origin" in its place; and in the third and sixth sentences, the word "pathologists" is removed and the phrase "protection officers" is added in its place and the word "Japan" is removed and the phrase "the country of origin" is added in its place.

d. Paragraph (b)(2) is amended by removing the word "pathologists" and adding the phrase "protection officers" in its place and by removing the word "Japan" and adding the phrase "the country of origin" in its place.

e. Paragraph (b)(4)(ii) is amended by removing the phrase "Japanese Plant Protection Service" and adding the phrase "plant protection service of the country of origin" in its place.

f. Paragraph (b)(7) is removed.

g. In paragraph (f), the word "Japan" is removed and the phrase "the country of origin of the Unshu oranges" is added in its place.

Done in Washington, DC, this 24th day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-18778 Filed 7-31-95; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV95-922-2IFR]

Expenses for the 1995-96 Fiscal Year for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses for the 1995-96 fiscal year for Marketing Orders (M.O.) No.'s 922 and 923, covering apricots and sweet cherries grown in designated counties in Washington, and M.O. No. 924 covering fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization of these budgets enables the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Marketing Committee (Committees) established under these marketing orders to incur expenses that are reasonable and necessary to administer the programs. Funds to administer the programs are derived from assessments on handlers.

DATES: Effective beginning April 1, 1995, through March 31, 1996. Comments must be received by August 31, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; or by FAX: (202) 720-5698. 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: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW., Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326-2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreements and Marketing Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. The marketing agreements and orders are 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) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action authorizes expenses for the 1995-96 fiscal period which began April 1, 1995, through March 31, 1996. This interim final 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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 issued 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 about 55 handlers of Washington apricots, 55 handlers of Washington sweet cherries, and 30 handlers of Washington-Oregon fresh prunes subject to regulation under their respective marketing orders. In addition, there are about 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by each marketing order committee and submitted to the Department for approval. The members of the Committees are handlers and producers of the regulated commodities. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly