

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.

[FR Doc. 00-33142 Filed 12-27-00; 8:45 am]

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

clarified to include the Commissioner and officers within the Commissioner's chain of command, including the Deputy Commissioner, the EAC for Field Operations, the RD, the DD and the CPA.

Exceptions to Notice and Comment

The Service's implementation of this rule as an interim rule with provisions for post-promulgation public comment is based upon the exceptions to notice and comment found at 5 U.S.C. 553(a)(2) and 553(b)(3)(A) for the following reason: this rule relates to agency management and the rules of agency organization. It does not create a new authority, but merely clarifies the delegation of an existing authority.

Regulatory Flexibility Act

The Commission of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because this rule merely provides authority to Service officials to grant parole of aliens from Service custody. The aliens in Service custody are not considered small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under

Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards provided in section 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 210

Aliens, Migrant labor, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 241

Aliens.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.12 [Amended]

2. Section 103.12 is amended by revising the reference to "212.5(a)(3)" to read "212.5(b)(3)" in paragraph (a)(3)(ii).

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

3. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

§ 208.8 [Amended]

4. Section 208.8 is amended by revising the reference to "212.5(e)" to read "212.5(f)" in paragraph (a) and (b).

PART 210—SPECIAL AGRICULTURAL WORKERS

5. The authority citation for part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160, 8 CFR part 2.

§ 210.4 [Amended]

6. Section 210.4 is amended by revising the reference to "212.5(e)" to read "212.5(f)" in the last sentence of paragraph (b)(2).

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

7. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

8. Section 212.5 is amended by:
- Redesignating paragraphs (a) through (g) as paragraphs (b) through (h) respectively;
 - Adding a new paragraph (a);
 - Revising the reference to "(a)(3)(i)" to read "(b)(3)(i)" in the introductory text in newly redesignated paragraph (b)(3);
 - Revising the reference to "paragraph (a)" to read "paragraph (b)" in the first sentence of newly redesignated paragraph (c);
 - Revising the reference to "paragraph (c)" to read "paragraph (d)"

in the first sentence of newly redesignated paragraph (c);

f. Revising the reference to "paragraph (e)" to read "paragraph (f)" in the second sentence of newly redesignated paragraph (c);

g. Revising the reference to "paragraph (a) or (b)" to read "paragraph (b) or (c)" in the first sentence of the introductory text of newly redesignated paragraph (d);

h. Revising the reference to "(d)(2)" to read "(e)(2)" in newly redesignated paragraph (e)(1);

i. Revising the reference to "(d)(1)" to read "(e)(1)" in newly redesignated paragraph (e)(2)(i);

j. Revising the reference to "212.5(d)(2)(i)" to read "212.5(e)(2)(i)" in the last sentence of newly redesignated paragraph (e)(2)(ii); and by

k. Revising the reference to "(g)(2)" to read "(h)(2)" in newly redesignated paragraph (h)(1), to read as follows:

§ 212.5 Parole of aliens into the United States.

(a) The authority of the Commissioner to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the district director or chief patrol agent, subject to the parole and detention authority of the Commissioner or her designees, which include the Deputy Commissioner, the Executive Associate Commissioner for Field Operations, and the regional director, any of whom in the exercise of discretion may invoke this authority under section 212(d)(5)(A) of the Act.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

9. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

§ 235.3 [Amended]

10. Section 235.3 is amended by revising the reference to "212.5(a)" to read "212.5(b)" in the second sentence of paragraph (c).

§ 235.4 [Amended]

11. Section 235.4 is amended by revising the reference to "212.5(a)" to read "212.5(b)" in the last sentence.

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

12. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

§ 241.33 [Amended]

13. Section 241.33 is amended by revising the reference to "212.5(a)" to read "212.5(b)" in the introductory text of paragraph (a).

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

14. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

§ 245a.2 [Amended]

15. Section 245a.2 is amended by revising the reference to "212.5(e)" to read "212.5(f)" in paragraph (m)(1), and in the last sentence of paragraph (n)(2)(i).

§ 245a.4 [Amended]

16. Section 245a.4 is amended by revising the reference to "212.5(e)" to read "212.5(f)" in paragraph (b)(13)(i), and in the last sentence of paragraph (b)(14)(ii)(A).

Dated: December 21, 2000.

Mary Ann Wyrsh,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 00-33133 Filed 12-27-00; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 244

INS No. 1972-99

RIN 1115-AF01

Temporary Protected Status: Amendments to the Requirements for Employment Authorization Fee, and Other Technical Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published by the Immigration and Naturalization Service (Service) in the **Federal Register** on February 1, 1999. The interim rule amended the Service regulations by removing outdated language requiring that only certain El Salvadorans must pay a fee for Temporary Protected Status (TPS)-related employment authorization documents (EADs). Removing the language was necessary to make Service

regulations conform to the requirement that instructs all applicants for TPS who desire employment to pay the fee.

DATES: This final rule is effective January 29, 2001.

FOR FURTHER INFORMATION CONTACT:

Michael Valverde, Adjudications Officer, Office of Adjudications, Room 3040, 425 I Street NW., Washington, DC 20536, telephone: (202) 514-4754.

SUPPLEMENTARY INFORMATION:

What Did the February 1, 1999, Interim Rule Change?

On February 1, 1999, the Service published an interim rule in the **Federal Register** at 64 FR 4780. The interim rule:

(1) Amended § 244.6 to remove outdated language requiring that only certain El Salvadorans must pay a fee for TPS-related applications for EADs. Section 244.6 previously stated that "* * * the fee for Form I-765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization." This language pertained to the statutory designation of El Salvador for TPS (under section 303 of the Immigration Act of 1990) that expired June 30, 1992.

The El Salvador specific fee language was superseded by the fee requirements contained on the instructions to the Form I-765, Application for Employment Authorization. The Form I-765 instructs applicants filing for initial TPS to pay the fee if they wish to receive employment authorization. The Service generally charges fees for persons who apply for TPS on Form I-821, Application for Temporary Protected Status, and who want employment authorization regardless of nationality. Applicants also have the option of requesting a fee waiver for one or both of these fees in accordance with § 244.20. The Service does not charge a fee when a TPS applicant files the Form I-765 to comply with Service data collection purposes only and does not wish to receive employment authorization.

(2) Amended 8 CFR part 244 to remove the word "district" when used in a reference to a "district director." This change provides the Service with the flexibility to determine where an applicant should submit an application for TPS and which Service personnel will adjudicate the application.

(3) Amended § 244.12 to allow the Service to issue EADs which are valid for a period of up to 18 months to be commensurate with the entire designation period of TPS. Under