

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: <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.

This rule invites comments on suspending the word "normal" in § 930.54(a) to allow the release of inventory reserve cherries into exempt use outlets such as exports. All comments received will be considered in finalizing this interim final rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that the word "normal" in § 930.54(a) no longer tends to effectuate the declared policy of the Act and should be indefinitely suspended.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 fiscal period began July 1, 2000, and this rule needs to be effective as soon as possible in order to allow the industry to take advantage of the expanded inventory release; and (2) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### 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**

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### **930.54 [Suspended in part]**

2. In § 930.54(a), the word "normal" is suspended indefinitely.

Dated: December 27, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 01–96 Filed 1–2–01; 8:45 am]

**BILLING CODE 3410–02–P**

### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 930**

[Docket No. FV01–930–1 IFR]

#### **Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rates**

**AGENCY:** Agricultural Marketing Service, USDA.

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

**SUMMARY:** This rule decreases the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0017 to \$0.0012 per pound. It also decreases the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.00085 to \$0.0006 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000–2001 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective January 4, 2001. Comments received by March 5, 2001, 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](mailto:moab.docketclerk@usda.gov). Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in

the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### **FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 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, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders 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](mailto: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." The marketing agreement and order 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable tart cherries beginning July 1, 2000, and continue until amended, suspended, or terminated. 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. Such 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 decreases the assessment rate established for the Board for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0017 to \$0.0012 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree is decreased from \$0.00085 to \$0.0006 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 2, 2000, and unanimously recommended, and the Department approved, 2000–2001 expenditures of \$455,000 and assessment rate decreases from \$0.00225 to \$0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree and from \$0.001125 to \$0.00085 per pound for

cherries utilized for juice, juice concentrate, or puree.

The Board met again on September 8, 2000, and unanimously recommended a further decrease in the assessment rates to \$0.0012 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and to \$0.0006 per pound for cherries utilized for juice, juice concentrate, or puree. Further decreased assessment rates have been recommended by the Board because the cherry industry has experienced record high crops for the past two seasons and again this season. In addition, the Board wants to further reduce handler costs while maintaining a monetary reserve which is adequate to cover approximately six months' operational expenses (based on an annual operating budget of approximately \$455,000). Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The decreased rates are expected to generate enough income to meet the Board's reduced operating expenses in 2000–2001.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1999, tart cherry utilization for juice, wine, or brined uses was 34.5 million pounds for all districts covered under the order. The total processed amount of tart cherries for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented less than 14 percent of the total processed crop, and about 10 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the crop year at 280 million pounds. It further estimated that about 265 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be

approximately \$318,000 (265 million pounds X \$0.0012 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be \$9,000 (15 million pounds X \$0.0006 per pound). Therefore, total assessment income for 2000–2001 is estimated at \$327,000. This amount plus adequate funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately \$374,000) will be kept within the approximately six months' operating expenses as recommended by the Board which would be consistent with the order (7 CFR 930.42(a)).

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

#### **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 initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows 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 opts for such certification, but rather performs 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 the 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 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 have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$5,000,000, and small agricultural producers are those whose annual receipts are less than \$500,000. The majority of tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended, and the Department approved, 2000–2001 expenditures of \$455,000 and assessment rate decreases from \$0.00225 to \$0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate or puree and from \$0.001125 to \$0.0085 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule further decreases the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from \$0.0017 to \$0.0012 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from \$0.00125 to \$0.0006 per pound. The Board unanimously recommended 2000–2001 expenditures of \$455,000 and the further reduced assessment rates. The quantity of assessable tart cherries expected to be produced during the 2000–2001 crop year is estimated at 280 million pounds. Assessment income, based on this crop, along with interest income and reserves should be adequate to cover budgeted expenses.

The Executive Committee of the Board, after discussing the budget and assessment rates in executive session, recommended the continuation of the current rates. It concluded that it was prudent for the Board to have an

operating reserve of approximately one year's operating expenses.

However, after considerable discussion, the Board concluded it should further reduce handlers' assessment costs and that the reserve should not exceed one-half year's budget amount. Also, the cherry industry has experienced record large crops for the past two seasons, and again this season. The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to exceed what is actually needed.

After the discussion, the Board voted unanimously to further decrease the assessment rates. In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 280 million pounds. It further estimated that about 265 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately \$318,000 (265 million pounds X \$0.0012 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be \$9,000 (15 million pounds X \$0.0006 per pound). Therefore, total assessment income for 2000–2001 is estimated at \$327,000. This amount plus adequate supplies in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately \$374,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (7 CFR 930.42(a)).

This action further decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate decreases reduce the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to

submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or 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 sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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 hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 fiscal period began on July 1, 2000, and the marketing order requires that the rates of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) this action decreases the assessment rates for assessable tart cherries beginning on July 1, 2000; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### **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**

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

**§ 930.200 Handler assessment rates.**

On and after July 1, 2000, the assessment rate imposed on handlers shall be \$0.0012 per pound for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for tart cherries grown in the production area and utilized in the production of juice, juice concentrate, or puree products shall be \$0.0006 per pound.

Dated: December 27, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 01–98 Filed 1–2–01; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 212**

[INS No. 2099–00]

RIN 1115–AF95

**Removing Burma From the Guam Visa Waiver Program**

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** The Guam Visa Waiver Program (GVWP) waives the nonimmigrant visa requirement for nationals of certain countries, including Burma (internationally recognized as Union of Myanmar), who apply for admission as a nonimmigrant visitor for business or pleasure for the sole purpose of visiting Guam for a period not exceeding 15 days. This rule will remove Burma from the list of countries authorized to participate in the GVWP without significantly restricting legitimate travel to Guam. This action is necessary to protect the United States' law enforcement and national security interests.

**DATES:** *Effective Date:* This interim rule is effective January 10, 2001.

*Comment Date:* Written comments must be submitted on or before March 5, 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. 2099–00 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:** Marty Newingham, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW, Room 4064, Washington, DC 20536, telephone number: (202) 616–7992.

**SUPPLEMENTARY INFORMATION:**

**What Is the GVWP?**

The GVWP waives the nonimmigrant visa requirement for certain aliens who apply for admission as a nonimmigrant visitor for business or pleasure for the sole purpose of visiting Guam for a period not exceeding 15 days.

The Omnibus Territories Act of 1986, Public Law 99–396, provided statutory authority to implement the GVWP. On December 18, 1987, the Immigration and Naturalization Service (Service) published a final rule in the **Federal Register** at 52 FR 48082, implementing the provisions of Public Law 99–396. The final rule also designated several countries including Burma to the list of countries authorized to participate in the GVWP.

**What Are The Requirements for Initial GVWP Participation?**

For a country to participate in the GVWP:

- The Attorney General, Secretary of State, and Secretary of Interior, acting jointly, after consultation with the Governor of Guam, must designate the country for the GVWP.

- The waiver of a nonimmigrant visa must pose no threat to the welfare, safety, or security of the United States, its territories, or commonwealths.

- The country must have a nonimmigrant visa refusal rate of 16.9 percent or less or have an established pre-inspection or pre-clearance program pursuant to a bilateral agreement with the United States.

- The country must be in geographical proximity to Guam, unless the country has a substantial volume of nonimmigrant travel to Guam and extends reciprocal privileges to citizens of the United States.

- The Department of State must not have designated the country as being of special humanitarian concern.

**What Are The Requirements for Removing a Country From Participation in the GVWP?**

The Commissioner shall immediately remove a country from the GVWP if she determines that the program country poses a potential threat to the welfare, safety, or security of the United States (including enforcement of the immigration laws of the United States).

**Why Is the Service Removing Burma From the List of Authorized GVWP Countries With This Interim Rule?**

- The Service has consulted with the Department of Justice, the Department of State, the Department of Interior, and the Governor of Guam and determined that Burma no longer meets the eligibility requirements for participating in the GVWP.

- Although Congress intended to limit the GVWP to short-term visitors to Guam, recently, the Agana Port-of-Entry has experienced an increasing number of Burmese GVWP applicants for admission who seek to remain permanently in the United States. Consequently, the Service has expended disproportionate resources in order to process Burmese travelers to Guam. These expenditures have created significant obstacles for the orderly enforcement of the U.S. immigration laws in Guam, including extended wait times for arriving travelers seeking to enter Guam.

- The refusal rate for Burmese applicants for visitors visas exceeded 40 percent over the last 4 years (1996–1999).

- The United States has not established a pre-inspection or pre-clearance program in Burma.

- Burma is a country in economic and political turmoil.

- Despite multiparty elections in 1990 that resulted in a decisive victory for the main opposition party, the military junta ruling Burma has refused to relinquish power.

- Burma lacks the will and ability to effectively participate in the anti-drug effort.

**Good Cause Exception**

This interim rule is effective January 10, 2001, although the Service invites post-promulgation comments and will address any such comments in a final rule. The Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553, Section 212.1(e)(2) of the Service's