this final rule. However, Florida citrus must meet the requirements specified in the U.S. standards for the various types of citrus grown in Florida issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 6, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on October 10, 2000 (65 FR 60121). Copies of the rule were mailed or sent via facsimile to all Committee members and citrus handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period ending December 11, 2000, was provided to allow interested persons to respond to the proposed rule. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping citrus from the 2000–2001 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR Parts 905 and 944 are amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 905.146, paragraph (c)(1) is revised to read as follows:

§ 905.146 Special purpose shipments.

* * * * *

(c) * * *

(1) Such fruit meets the requirements of U. S. No. 2 Russet grade and those requirements of U. S. No. 1 grade relating to shape (form), as such requirements are set forth in the revised U. S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), the revised Standards for Florida Tangerines (7 CFR 51.1810 through 51.1837), or the revised U. S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784). Such fruit also meets applicable minimum size requirements in effect for domestic shipments of citrus fruits.

* * * * *

4. In § 905.306, paragraphs (c) and (d) are revised to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation.

* * * * *

(c) *Size tolerances.* To allow for variations incident to proper sizing in the determination of minimum diameters as prescribed in Tables I and II, not more than 10 percent, by count, of the fruit in any lot of containers may fail to meet the minimum diameter size requirements, and not more than 15 percent, by count, in any individual sample may fail to meet the minimum diameter size requirements specified: *Provided,* That such tolerances for other than Navel and Temple oranges shall be based only on the oranges in the lot measuring $2^{14}/_{16}$ inches or smaller in diameter.

(d) Terms used in the marketing order including Improved No. 2 grade for grapefruit, when used herein, mean the same as is given to the terms in the order; Florida No. 1 grade for Honey tangerines means the same as provided in Rule No. 20–35.03 of the Regulations of the Florida Department of Citrus, and terms relating to grade, except Improved No. 2 grade for grapefruit and diameter, shall mean the same as is given to the terms in the revised U. S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), the revised U. S. Standards for Florida Tangerines (7 CFR 51.1810 through 51.1837), or the revised U. S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784).

PART 944—FRUITS; IMPORT REGULATIONS

5. In § 944.106, paragraph (c) is revised to read as follows:

§ 944.106 Grapefruit import regulation.

* * * * *

(c) Terms and tolerances pertaining to grade and size requirements, which are defined in the United States Standards for Grades of Florida Grapefruit (7 CFR 51.750–51.784), and in Marketing Order No. 905 (7 CFR §§ 905.18 and 905.306), shall be applicable herein.

* * * * *

Dated: December 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 01–97 Filed 1–2–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV00–930–6 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Suspension of Provisions under the Federal Marketing Order for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends indefinitely a portion of an order provision concerning the release of reserve cherries. The suspension will allow cherries held in inventory reserves to be released for exempt uses such as exports. The Cherry Industry Administrative Board (Board) recommended this action to allow reserve cherries to be used in outlets

other than normal commercial outlets. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area.

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. 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.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2AO4, 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 compliance 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.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The 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. 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. 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.

The order authorizes the use of volume regulation. In years when volume regulation is implemented to stabilize supplies, a certain percentage of the cherry crop is required to be set aside as restricted tonnage, and the balance may be marketed freely as free tonnage. The restricted tonnage is required to be maintained in handler-owned inventory reserve pools. Handlers in volume regulated States may fulfill their restricted tonnage requirements with diversion credits earned by diverting cherries or cherry products. Handlers are permitted to divert (at plant or with grower-diversion certificates from growers choosing not to deliver their crop) as much of their restricted percentage (reserve pool) requirements as they deem appropriate. Handlers also may divert cherries by using cherries or cherry products for exempt purposes, including the development of export markets. Presently, these markets do not include Canada and Mexico.

Section 930.62 of the order (Exemptions) provides that cherries which are diverted in accordance with § 930.59, which are used for new product and new market development, which are used for experimental purposes, or which are used for any other purposes designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries was utilized, may be exempted from the assessment, quality control, volume regulation, and reserve provisions of the order.

Handlers can receive exemptions and diversion credits to offset their restricted percentage obligation during years of volume regulation. One of the exempt uses is the export of cherries to markets other than Canada and Mexico. Cherries used for exempt uses, including export, are exempt from assessments, and handlers pay growers less for such cherries than cherries for normal commercial outlets. This lowers handlers' costs and allows them to price export cherries competitively.

The Board held a teleconference meeting on June 1, 2000, and recommended that the word ''normal'' be suspended from § 930.54(a) of the order. Currently, that section of the order provides that if the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount needed to meet the demand in such outlets, the Board shall recommend to the Secretary that all or a portion of the reserve be released for such uses. Normal commercial outlets, as that term is used in the order, means the primary market which is mainly the domestic market for tart cherries. Therefore, under § 930.54(a), reserve release could not be used to fulfill exempt needs.

During the 1999–2000 crop year when no volume regulation was established, the Board found that the export market was not adequately supplied due to short supplies of tart cherries, but could not make reserve cherries from the previous season available to meet export needs because export markets were not considered normal commercial outlets. Because of this limitation, the industry was not able to maintain a presence in many export markets, or further develop others. Export sales are a function of many different factors, including the size of the crop in Europe, the size of the U.S. crop, and the strength of the U.S. dollar.

Exports need to be sustained each year, whether or not volume control is implemented. It is important for buyers of tart cherries to know that product will be available from year to year from sources in the United States. The Board believes that failure to properly supply these markets will result in lost market share. In years with no volume regulation, growers and handlers have little economic incentive to move tart cherries or tart cherry products to the lower return markets, like export. In such years, growers seek to maximize profits by selling in the higher return ''free'' domestic market. Consequently,

market opportunities are lost in the short term and quite possibly the long term. Development of export markets is important to the long term viability of the tart cherry industry.

This rule suspends indefinitely a portion of § 930.54 of the order to allow the release of reserve cherries for exempt uses such as exports. This will encourage handlers to purchase additional cherries from growers at lower prices in years of volume regulation for placement in the reserve during harvest for future export use, rather than having the grower divert them in the orchard. Thus, additional lower-priced cherries would be available in a year of no regulation to continuously supply the export market. This will enable the industry to maintain market share in these markets in volume and non-volume regulated seasons, which is important in developing and maintaining these markets.

In non-volume regulated years, when expected supplies and primary market needs are closely aligned, lower-priced supplies are not available for export. This action will provide the industry with a means of maintaining exports by allowing lower-priced reserves from a previous season or seasons to be used for this purpose.

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) would allow 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 opt 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 rules 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 900 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts 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 tart cherry producers and handlers may be classified as small entities.

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 for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented about 14 percent of the total processed crop, and about 10 percent over the last three seasons (1997 through 1999).

This rule will allow markets that have been developed and sustained by the use of the exemption and diversion provisions of the order in years of volume regulation to be sustained in years with no volume regulation. In the long run, market growth for tart cherry products will be increased, grower returns will be improved, and less fruit will be abandoned in the orchard by growers. Handlers will have an incentive to put cherries in the reserve to supply the export market in years of no regulation, and therefore, not as many growers will have to in-orchard divert.

All businesses, whether large or small, will benefit from this suspension action through increased sales during years of no regulation because they will be able to continue to supply the export markets. In years of volume regulation, handlers tend to put more cherries in reserve instead of diverting them because they expect to use those cherries during periods of short supply to assure a continuous supply of cherries. Currently, those cherries can only be released for normal commercial outlets; i.e., the domestic market. This action will allow the reserve cherries to be released for export, as well as the domestic market, when needed.

During the 1999–2000 crop year, when no volume regulation was established, the Board found that the export market was not adequately supplied, but could not make lower-valued reserve cherries from the previous season available to meet export needs because export markets were not considered normal commercial outlets. Export sales are a function of many different factors, including the size of the crop in Europe, the size of the U.S. crop and the strength of the U.S. dollar.

The industry recognizes, however, that exports need to be sustained each year, whether or not volume control is implemented. It is important for buyers of tart cherries to know that product will be available from year to year from sources in the United States. The Board believes that failure to properly supply these markets from year to year will result in lost market share, which is not conducive to further strengthening the industry.

This rule suspends indefinitely a portion of § 930.54 of the order to allow the release of reserve cherries for exempt uses such as exports. This will provide the industry with flexibility to meet market needs in domestic and export outlets from year to year which is in the interest of growers and handlers, whether small or large. Market development and expansion is important to the long-term strength of the industry.

One alternative to this action would be to continue the status quo. However, this would not be favorable to cherry growers and handlers and could delay the long-term development of export markets.

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

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's telephone meeting was publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

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]

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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. 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.

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