(iv) The samples are analyzed by a grader in accordance with the Directive for Inspection of Mustard Seed, provided by the Federal Grain Inspection Service or such other directive or standards that may be issued by FCIC.

(4) Mustard production that is eligible for quality adjustment, as specified in sections 13(d)(2) and (3), will be reduced by multiplying the quality adjustment factors contained in the Special Provisions (if quality adjustment factors are not contained in the Special Provisions, the quality adjustment factor is determined by dividing the salvage price by the base contract price (not to exceed 1.000)) by the number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production.

(i) The salvage price will be determined at the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit subject to the following conditions:

(A) Discounts used to establish the salvage price will be limited to those that are usual, customary, and reasonable.

(B) The salvage price will not include any reductions for:

(1) Moisture content;

(2) Damage due to uninsured causes;

(3) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the mustard; except, if the salvage price can be increased by conditioning, we may reduce the salvage price, after the production has been conditioned, by the cost of conditioning but not lower than the salvage price before conditioning; and

(i) We may obtain salvage prices from any buyer of our choice. If we obtain salvage prices from one or more buyers located outside your local market area, we will reduce such price by the additional costs required to deliver the mustard to those buyers.

(ii) Factors not associated with grading under the Directive for Inspection of Mustard Seed, provided by the Federal Grain Inspection Service or such other directive or standards that may be issued by FCIC including, but not limited to, protein and oil will not be considered.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

14. Late Planting

In lieu of section 16(a) of the Basic Provisions, the production guarantee (per acre) for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date, unless otherwise specified in the Special Provisions.

15. Prevented Planting

In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting coverage will be 60 percent of your production guarantee (per acre) for timely planted acreage. When a portion of the insurable acreage within the unit is prevented from being planted, and there is more than one base contract price applicable to acreage in the unit, the lowest base contract price will be used in calculating any prevented planting payment. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

Signed in Washington, DC, on February 20, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–3963 Filed 2–29–08; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AMS–FV–07–0119; FV07–930–3 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2007–2008 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for 2007–2008 crop year tart cherries covered under the Federal marketing order regulating tart cherries grown in seven states (order). The percentages are 57 percent free and 43 percent restricted and will establish the proportion of cherries from the 2007 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the order. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: *Effective Date:* March 4, 2008. This final rule applies to all 2007–2008 crop year restricted cherries until they are properly disposed of in accordance with marketing order requirements.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; e-mail *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ‘‘order.’’ The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ‘‘Act.’’

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This final rule establishes final free and restricted percentages for tart cherries for the 2007–2008 crop year, beginning July 1, 2007, through June 30, 2008. This 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 request a modification of the order or to be exempt 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 in equity 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 prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts within the production area. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (to obtain diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated districts for the 2007–2008 season are: District one—Northern Michigan; District two—Central Michigan; District four—New York; District seven—Utah; and District eight—Washington. Districts three, five, and six (Southwest Michigan, Oregon, and Pennsylvania, respectively) will not be regulated for the 2007–2008 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of Southwest Michigan, Oregon, and Pennsylvania, handlers in those districts would not be subject to volume regulation during the 2007–2008 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order prescribes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume is calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this represents the estimated over-production, which would be the restricted tonnage. The restricted tonnage is then divided by the sum of the crop forecast(s) for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 21, 2007, and computed, for the 2007–2008 crop year, an optimum supply of 175 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds.

The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop for the entire production area was 294 million pounds; a 42 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 175 million pounds which resulted in the 2007–2008 poundage requirements (adjusted optimum supply) of 133 million pounds. The carryin figure reflects the amount of cherries that handlers actually had in inventory at the beginning of the 2007–2008 crop year. Subtracting the adjusted optimum supply of 133 million pounds from the USDA crop estimate (294 million pounds) leaves a surplus of 161 million pounds of tart cherries. Subtracting an additional 12 million pounds for USDA purchases of tart cherry products from the 2006–07 crop but not delivered until 2007 results in a final surplus of 149 million pounds of tart cherries. The surplus (149 million pounds) was divided by the production in the regulated districts (289 million pounds) and resulted in a restricted percentage of 52 percent for the 2007–2008 crop year. The free percentage was 48 percent (100 percent minus 52 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2007–2008 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	175
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	175

		Millions of pounds
Preliminary Percentages:		
(4) USDA crop estimate		294
(5) Carryin held by handlers as of July 1, 2007		42
(6) Adjusted optimum supply for current crop year (Item 3 minus Item 5)		133
(7) Surplus (Item 4 minus Item 6)		161
(8) Subtract pounds for USDA purchases		12
(9) Surplus (Item 7 minus Item 8)		149
(10) USDA crop estimate for regulated districts		289
Percentages	Free	Restricted
(11) Preliminary percentages (Item 9 divided by Item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage	48	52

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages will make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage. The Board met on September 6, 2007, to recommend final free and restricted percentages.

The actual production reported by the Board was 248 million pounds, which is a 46 million pound decrease from the USDA crop estimate of 294 million pounds.

A 39 million pound carryin (based on handler reports) was subtracted from the optimum supply of 174 million pounds, yielding an adjusted optimum supply for the 2007–2008 crop year of 135 million pounds. Subtracting the adjusted optimum supply of 135 million pounds from the USDA crop estimate (248 million pounds) and subtracting 12 million pounds for USDA purchases of tart cherry products from the 2006–07 crop but not delivered until 2007 results in a surplus of 101 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (236 million pounds) and resulted in a restricted percentage of 43 percent for the 2007–2008 crop year. The free percentage was 57 percent (100 percent minus 43 percent).

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2007–2008 crop year:

		Millions of pounds
Optimum Supply Formula:		
(1) Average sales of the prior three years		174
(2) Plus desirable carryout		0
(3) Optimum supply calculated by the Board		174
Final Percentages:		
(4) Board reported production		248
(5) Plus carryin held by handlers as of July 1, 2007		39
(6) Subtract USDA committed sales		12
(7) Tonnage available for current crop year		275
(8) Surplus (item 7 minus item 3)		101
(9) Production in regulated districts		236
Percentages	Free	Restricted
(10) Final Percentages (item 8 divided by item 9 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	57	43

USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal will be met by the establishment of a final percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 17 million pounds will be made available to handlers this season in accordance with Department Guidelines. This release will be made available to every handler and released to such handler in proportion to the handler's percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount remains in the inventory reserve.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2002/03 through 2006/07, approximately 97.9 percent of the U.S. tart cherry crop, or 202.9 million pounds, was processed annually. Of the 202.9 million pounds of tart cherries processed, 63.5 percent was frozen, 23.8 percent was canned, and 12.7 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 35,800 acres in 2006/07. This represents a 29 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2007/08 crop is moderate in size at 248 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 5.6 cents in 1995 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices and supplies, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds, and to states or districts in which the production is 50 percent or more of the previous 5-year processed production average.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the costs for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The two districts in Michigan, along with the districts in Utah, New York, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 236 million pounds. A 43 percent restriction means 186 million pounds is available to be shipped to primary markets.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 17 million pounds being available for the primary market. The 135 million pounds from the two regulated districts in Michigan, Utah, Washington, New York, and Wisconsin, the 12.3 million pounds from the other producing states, the 17 million pound release, and the 39 million pound carry-in inventory gives a total of 203 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. With the volume controls, grower prices are estimated to be approximately $0.12 higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With regulation, growers' total revenues from processed cherries are estimated to be $10.1 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments.

It is concluded that the 43 percent volume control would not unduly burden producers, particularly smaller growers. The 43 percent restriction would be applied to the growers in the two districts in Michigan, New York, Utah, Washington, and Wisconsin. The growers in the other two states and the one district in Michigan covered under the marketing order will benefit from this restriction.

The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002–2003 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2007–2008 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2007 of the free and restricted percentages established by this rule (57 percent free and 43 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2007–2008 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years. The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

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 6, 2007, 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.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin.

Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

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.

A proposed rule concerning this action was published in the **Federal Register** on December 11, 2007 (72 FR

70240). Copies of the rule were mailed or sent via facsimile to all Board members and tart cherry handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending on January 10, 2008, was provided to allow interested persons to respond to the proposal. No comments were received.

After consideration of all relevant matter 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.

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 tart cherries from the 2007–2008 crop and handlers need to be aware of this action as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

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 930.256 is added to read as follows:

Note: This section will not appear in the Annual Code of Federal Regulations.

§ 930.256 Final free and restricted percentages for the 2007–2008 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2007, which shall be free and restricted, respectively, are designated as follows: Free percentage, 57 percent and restricted percentage, 43 percent.

Dated: February 27, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–4008 Filed 2–29–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AO–192–A7; AMS–FV–07–0004; FV06–984–1]

Walnuts Grown in California; Order Amending Marketing Order and Agreement No. 984

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the marketing order for walnuts grown in California. The amendments were proposed by the Walnut Marketing Board (Board), which is responsible for local administration of the order. The amendments will: Change the marketing year; include ''pack'' as a handler function; restructure the Board and revise nomination procedures; rename the Board and add authority to change Board composition; modify Board meeting and voting procedures; add authority for marketing promotion and paid advertising; add authority to accept voluntary financial contributions and to carry over excess assessment funds; broaden the scope of the quality control provisions and add the authority to recommend different regulations for different market destinations; add authority for the Board to appoint more than one inspection service; replace outdated order language with current industry terminology; and other related amendments.

The Department of Agriculture (USDA) proposed three additional amendments: To establish tenure limitations for Board members, to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order, and to make any necessary conforming changes.

With the exception of the amendment to establish tenure limitations, all of the amendments were favored by walnut growers in a mail referendum, held August 1 through 17, 2007. The proposed amendments are intended to improve the operation and functioning of the marketing order program.

DATES: This rule is effective April 2, 2008, except for amendments to §§ 984.7, 984.13, 984.14, 984.15, 984.21, 984.22, 984.42, 984.46, 984.48, 984.50, 984.51, 984.52, 984.59, 984.67, 984.69, 984.70, 984.71, 984.73 and 984.89, which are effective September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Northwest Marketing Field Office, 1220 S.W. Third Avenue, Room 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: *Melissa.Schmaedick@usda.gov.*

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on April 18, 2006, and published in the April 24, 2006, issue of the **Federal Register** (71 FR 20902); a Recommended Decision issued on March 19, 2007, and published in the March 27, 2007, issue of the **Federal Register** (72 FR 14368); and Secretary's Decision and Referendum Order issued on July 9, 2007, and published in the July 13, 2007 issue of the **Federal Register** (72 FR 38498).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held on May 17 and 18, 2006, in Modesto, California. Notice of this hearing was issued April 18, 2006 and published in the **Federal Register** on April 24, 2006 (71 FR 420902). The hearing was held to consider the proposed amendment of Marketing Order 984, hereinafter referred to as the ''order.''

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The notice of hearing contained order changes proposed by the Walnut Marketing Board (Board), which is responsible for local administration of the order, and by the Agricultural Marketing Service (AMS).

Upon the basis of evidence introduced at the hearing and the record