was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to cover the increased costs and to keep its operating reserve at an acceptable level.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $211,082 which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. These groups discussed alternative expenditure levels. The assessment rate of $0.20 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 950,000 55-pound bushel containers or equivalents for the 2002–03 fiscal year. This is approximately $21,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2002–03 season could range between $10.00 and $60.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue fro the 2002–03 fiscal year as a percentage of total grower revenue could range between .3 and 2 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 9, 2002, 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 proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado 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.

USDA 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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period begins on April 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past year.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2002, an assessment rate of $0.20 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6139 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2001–2002 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 2001–2002 crop year. The percentages are 59 percent free and 41 percent restricted and would establish the proportion of cherries from the 2001 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by April 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours 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, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

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, 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 proposal 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal 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 rule would establish final free and restricted percentages for tart cherries for the 2001–2002 crop year, beginning July 1, 2001, through June 30, 2002. This rule would 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 § 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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, USDA 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 USDA'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. 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 (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; and District eight—Washington. Districts five, six, seven, and nine (Oregon, Utah, Pennsylvania, and Wisconsin, respectively), would not be regulated for the 2001–2002 season.

The order prescribes under § 930.52 that, upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts would not be subject to volume regulation during the 2001–2002 crop year. Section 930.52 also prescribes that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established. Because Utah's production is less than the 50 percent of the previous 5-year production average, handlers in Utah also would not be subject to volume regulation during the 2001–2002 crop year. Production from District four (New York) was not regulated last crop year, but, as mentioned above, will be regulated in 2001–2002. This would be the first year of regulation for District eight (Washington), since the order was promulgated.

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 tends 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 are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into canned or frozen products, 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 describes 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 in order to establish an optimum supply level for the crop year. 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. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast 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 must announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 21, 2001, and computed, for the 2001–2002 crop year, an optimum supply of 219 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 was 356 million pounds; a 33 million pound carryin added to that estimate results in a total available supply of 389 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 219 million pounds from the total estimated available supply results in a surplus of 170 million pounds of tart cherries. An adjustment for changed economic conditions of 50 million pounds was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 120 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (338 million pounds) and resulted in a restricted percentage of 36 percent for the 2001–2002 crop year. The free percentage was 64 percent (100 percent minus 36 percent). The Board unanimously 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 2001–2002 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	219
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	219
Preliminary Percentages:	
(4) USDA crop estimate	356
(5) Plus carryin held by handlers as of July 1, 2000.	33
(6) Total available supply for current crop year	389
(7) Surplus (item 6 minus item 3)	170
(8) Economic adjustment to surplus	50
(9) Adjusted surplus (item 7 minus item 8)	120
(10) USDA crop estimate for regulated districts	338

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	64	36

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.

On September 17, 2001, the Board conducted a telephone meeting and voted unanimously to establish interim percentages since the September 13, 2001, meeting was postponed until October due to the tragic events on September 11, 2001. The Board recommended an interim free percentage of 57 percent and an interim restrictive percentage of 43 percent. These percentages were based on the actual production for the 2001–2002 crop year of 366 million pounds, and more up-to-date sales and carryin inventory amounts.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. Because of the events of September 11, 2001, and subsequent flight delays, the Board met on October 12, 2001, and recommended final free and restricted percentages of 59 percent and 41 percent, respectively. At that time, the Board had available actual production, sales, and carryin inventory amounts to review and made adjustments to the interim percentages.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would 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 used an updated optimum supply figure in determining the final free and restricted percentages. The revised optimum supply is 217 million pounds, instead of 219 million pounds used in June. The 3-year average sales figure computed in June included an estimate of June 2001 sales because actual June sales were not yet available. The 3-year average sales figure used in the final calculations reflects actual sales for each month of the 3-year period.

The actual production reported by the Board was 366 million pounds, which is a 10 million pound increase from the USDA crop estimate of 356 million pounds. The increase in production was due to higher yields in the major producing States (Michigan, New York, Washington). For 2001–2002, production in the regulated districts totaled 336 million pounds, 2 million pounds less than the USDA estimate of 338 million pounds.

A 39 million pound carryin (actual carryin as opposed to the 33 million pounds originally estimated in June) was added to the Board's reported production of 366 million pounds, yielding a total available supply for the current crop year of 405 million pounds. The optimum supply of 217 million pounds was subtracted from the total available supply which resulted in a 188 million pound surplus. An adjustment of 50 million pounds for changed economic conditions was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 138 million pounds of tart cherries. The total surplus of 138 million pounds is divided by the 336 million-pound volume of tart cherries produced in the regulated districts. This results in a 41 percent restricted percentage and a corresponding 59 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in October for the 2001–2002 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	217
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the October meeting	217
Final Percentages:	
(4) Board reported production	366
(5) Plus carryin held by handlers as of July 1, 2001	39
(6) Tonnage available for current crop year	405
(7) Surplus (item 6 minus item 3)	188
(8) Economic adjustment to surplus	50
(9) Adjusted surplus (item 7 minus 8)	138
(10) Production in regulated districts	336

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	59	41

As previously mentioned, the Board recommended an economic adjustment of 50 million pounds in computing both the preliminary and final percentages for the 2001–2002 crop year. This is authorized under § 930.50. These provisions provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having a bearing on the marketing of cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions. The Board recommended the adjustment to reflect the impact of USDA surplus removal purchases might have on the sales component of the optimum supply formula.

Purchases by USDA and other government agencies are part of the average sales history for the industry. In recent years, USDA and other government purchases of tart cherry products have averaged about 17 million pounds and these have been factored into the optimum supply formula. In 2000–2001, USDA announced the acceptance of bids for a large surplus removal purchase. The amount of the purchases is expected to total 50 million pounds and be delivered during the 2001–2002 crop year. The Board discussed how this purchase should be accounted for in the optimum supply formula. The Board decided on a full 50-million pound economic adjustment because it results in a smaller restricted percentage than with no adjustment. With the adjustment, the restricted percentage is 41 percent. Without the adjustment, the restricted percentage would have been 56 percent.

By recommending this marketing policy modification, the Board believes that fewer cherries would have to be diverted and more cherries would be available to meet market needs. This modification is intended to further facilitate and encourage market expansion. It is also expected to benefit growers who receive higher payments for free tonnage cherries.

In May 2001, reserve release provisions were added to the administrative rules and regulations in § 930.154. The provisions provide that if USDA or any other governmental agency initiates an invitation to purchase product for surplus removal (as a non-entitlement purchase), the Board shall release a like quantity of cherries from the reserve pool to each handler who has a proportionate share in the reserve. These provisions were not effective prior to the initiation of the invitation to bid on USDA's planned 50 million pound surplus removal purchase. Therefore, reserve cherries could not be released from the inventory reserve pursuant to § 930.154 and the cherries had to be supplied from free tonnage, not reserve tonnage. Consequently, the Board recommended the economic adjustment of 50 million pounds to account for the free tonnage cherries delivered from the 2001–2002 crop to satisfy the purchase. If an invitation to bid on a surplus removal purchase is initiated by USDA or another government agency during the 2001–2002 crop year, or subsequent season, a like quantity of reserve tonnage would be released under § 930.154 and no economic adjustment would be necessary to account for those cherries. The Board believes that such releases will equitably spread the benefit of such purchases throughout the industry because all handlers regulated under the order, and not just those handlers who successfully bid and sold product to USDA or other government agencies, will benefit from the surplus removal of tart cherry purchases.

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. This goal would be met by the establishment of a preliminary 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 during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 22 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

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 perform 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 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 $5,000,000, 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.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

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 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

The 2001 crop is the second largest ever harvested in the United States at 366.3 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 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. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

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 are 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, 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 15 million pounds. Currently, only the three districts in Michigan, New York, and Washington are subject to restricted percentages.

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 cost 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 carryin 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 low 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 model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, New York and Washington are the only restricted areas for this crop year and their combined total production is 336 million pounds. A 41 percent restriction means 198 million pounds is available to be shipped to primary markets from these three states. Production levels of 2 million pounds for Oregon, 4 million pounds for Pennsylvania, 12 million pounds for Utah, and 13 million pounds for Wisconsin results in an additional 31 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 22 million pounds being available for the primary market. The 198 million pounds from Michigan, New York and Washington, the 31 million pounds from the other producing states, and the 22 million pound release gives a total of 251 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.10 per pound. With volume controls, the estimated grower price would increase to approximately $0.15 per pound.

The use of volume controls is estimated to have a positive impact on grower's total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $36.6 million in 2001/02. In this scenario, production is 366 million pounds and price, without regulation, is estimated to be $0.10 per pound. With regulation, growers' revenues from processed cherries are estimated to be $46.5 million. In this scenario, 251 million pounds are available for the primary markets with an estimated price of $0.15 per pound. Over the past several seasons, growers received approximately $0.10 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as grower prices are greater than $0.11 per pound, then growers' are better off with the regulation. With a price of $0.11 per pound, the estimated revenues under no regulation would be similar to the revenues with a 41 percent restricted regulation.

It is concluded that the 41 percent volume control would not unduly burden producers, particularly smaller growers. The 41 percent restriction is only applied to the growers in Michigan, New York, and Washington. The growers in the other 4 regulated states will benefit from this restriction. Michigan, New York, and Washington produced over 91 percent of the tart cherry crop during the 2001/02 crop year.

Recent grower prices have been as high as $0.21 per pound. At current production levels, the cost of production is reported to be $0.25 per pound. Thus, the estimated $0.15 per pound received by growers remains below the cost of production. 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 continue 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 $0.0029 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.

In discussing the possibility of marketing percentages for the 2001–2002 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 October 2001 of the restricted percentages proposed in this rule (59 percent free and 41 percent restricted).

A positive factor for the cherry industry this year is the unusually large USDA purchases of cherries during this crop year. These USDA sales include a significant amount of frozen cherries and large quantities of dried cherries.

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 2001–2002 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 proposed to be 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.

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

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.

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 have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The 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.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 2001–2002 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be 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 930.253 is added to read as follows:

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

§ 930.253 Final free and restricted percentages for the 2001–2002 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2001, which shall be free and restricted, respectively, are designated as follows: Free percentage, 59 percent and restricted percentage, 41 percent.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6136 Filed 3–14–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound. It also would increase the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2001–2002 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 would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours 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, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

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 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