National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of pine products from these 19 newly regulated counties will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.50–3 is amended as follows:

a. In paragraph (c), under Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia, by adding new counties in alphabetical order to read as set forth below.

b. By removing paragraph (d).

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

INDIANA

* * * * *

Hancock County. The entire county.
Howard County. The entire county.

* * * * *

Tipton County. The entire county.

* * * * *

MICHIGAN

* * * * *

Chippewa County. The entire county.

* * * * *

Delta County. The entire county.

* * * * *

Leelanau County. The entire county.

* * * * *

Marquette County. The entire county.

* * * * *

Schoolcraft County. The entire county.

* * * * *

NEW YORK

* * * * *

Chemung County. The entire county.
Cortland County. The entire county.

* * * * *

Onondaga County. The entire county.

* * * * *

OHIO

* * * * *

Belmont County. The entire county.

* * * * *

Coshocton County. The entire county.

* * * * *

Morgan County. The entire county.

* * * * *

Noble County. The entire county.

* * * * *

Paulding County. The entire county.

* * * * *

PENNSYLVANIA

* * * * *

Blair County. The entire county.

* * * * *

Greene County. The entire county.

* * * * *

WEST VIRGINIA

* * * * *

Tyler County. The entire county.

* * * * *

Done in Washington, DC, this 29th day of December 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–112 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV98–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 1998–99 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes final free and restricted percentages for the 1998–99 crop year. The percentages are 60 percent free and 40 percent restricted. The percentages establish the proportion of cherries from the 1998 crop which may be handled in normal commercial outlets and are intended to stabilize supplies and prices, and strengthen market conditions. The percentages 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.

EFFECTIVE DATE: January 6, 1999 through June 30, 1999, and applies to all tart cherries handled from the beginning of the 1998–99 crop year.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, 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. 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) 205–6632, or E-mail: Jay__—N__ Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/f.v./moab.html.

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 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 rule establishes final free and restricted percentages for tart cherries for the 1998–99 crop year, beginning July 1, 1998, through June 30, 1999. 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 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. 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 section 930.59 of the order and section 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under section 930.62 of the order and section 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 seven—Utah. Districts five, six, eight and nine (Oregon, Pennsylvania, Washington, and Wisconsin, respectively) would not be regulated for the 1998–99 season.

The order prescribes under section 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. Therefore, for this season, handlers in the districts of Oregon, Pennsylvania, Washington, and Wisconsin would not be subject to volume regulation. They were also not subject to volume regulation during the last season.

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. The optimum supply volume shall be 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 carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and dividing that figure by the current year's USDA crop forecast. The carryin inventory figure reflects the amount of cherries that handlers actually have in inventory. If the resulting quotient is 100 percent or more, the Board should establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board should establish a preliminary free market tonnage percentage equivalent to the quotient, rounded to the nearest whole percent, with the complement being the preliminary restricted percentage.

The Board met on June 18–19, 1998, and computed, for the 1998–99 crop year, an optimum supply of 287.4 million pounds. The Board recommended that the carryout figure be zero pounds. 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 292.5 million pounds; a 46 million pound carryin added to that equaled a total available supply of 338.5 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. The optimum supply was subtracted from the total estimated available supply resulting in a surplus of 51.1 million pounds of tart cherries. An adjustment for changed economic conditions of 37.0 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 88.1 million pounds of tart cherries. The total surplus 88.1 million pounds is a correction to a proposed rule published November 18, 1998 (63 FR 64008) which incorrectly stated the resulting total surplus for 1998–99 at 125.1 million pounds. The surplus was divided by the production in the regulated districts (258 million pounds) and resulted in 66 percent free and 34 percent restricted for the 1998–99 crop year. The Board recommended these percentages by a 15 to 2 vote, with one abstention. Those Board members voting against the recommendation disagreed with the computation of the carryin figure because they thought that the figure should also include the amount in the inventory reserve. Record evidence received during the promulgation of the order indicated that the carryin figure reflects the amount of cherries that handlers actually have in inventory (not in the primary or secondary reserve). The Board recommended the 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 for the 1998–99 crop year:

	Millions of pounds
Optimum Supply Formula	
(1) Average sales of the prior three years	287.4
(2) Less carryout	0
(3) Optimum Supply calculated by the Board at the June meeting	287.4
Preliminary Percentages	
(4) Less carryin as of July 1, 1998	46.0
(5) Tonnage requirement for current crop year	241.4
(6) USDA crop estimate	292.5
(7) Surplus (item 6 minus item 5)	51.1
(8) Economic adjustment to surplus	37.0
(9) Adjusted surplus (item 7 plus item 8)	88.1
(10) USDA crop estimate for regulated districts	258.0

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10) × 100	66	34

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.

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. The Board met on September 10–11, 1998, and recommended final free and restricted percentages of 60 and 40, respectively. The Board recommended that the interim percentages and final percentages be the same percentages. At that time, the Board had available actual production amounts to review and made the necessary adjustments to the percentages.

The Secretary establishes final free and restricted percentages through an informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated earlier by the industry. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used a revised optimum supply figure for its final free and restricted percentage calculations. The figure is 288.6 million pounds instead of the 287.4 million pound figure used in June. This is because the 3-year average sales figure used at the June meeting by necessity required an estimate of June 1998 sales. The 3-year average sales figure used in the final calculations reflects actual sales through the 1997–98 crop year.

The optimum supply, therefore is 288.6 million pounds. The actual production recorded by the Board was 339.9 million pounds, which is a 47.4 million pound increase from the USDA crop estimate of 292.5 million pounds. The increase in the crop is due to very favorable growing conditions in portions of the State of Michigan this season. For the current crop year, 305.3 million pounds of tart cherries were produced in the regulated districts.

A 38.8 million pound carryin (actual carryin as opposed to the 46 million pounds originally estimated) was subtracted from the optimum supply of 288.6 million pounds, which yields a tonnage requirement for the current crop year of 249.8 million pounds. Subtracted from the actual production in all districts of 339.9 million pounds reported by the Board is the tonnage required for the current crop year (249.8 million pounds) which results in a 90.1 million pound surplus. An adjustment for changed economic conditions of 31.4 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 121.5 million pounds of tart cherries. The total surplus of 121.5 million pounds is divided by the 305.3 million pound volume of tart cherries produced in the regulated districts. This results in a 40 percent restricted percentage and a corresponding 60 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 for the 1998–99 crop year:

	Millions of pounds
Optimum Supply Formula	
(1) Average sales of the prior three years	288.6
(2) Less carryout	0
(3) Optimum Supply calculated by the Board at the September meeting	288.6
Final Percentages	
(4) Less carryin as of July 1, 1998	38.8
(5) Tonnage required current crop year	249.8
(6) Board reported production	339.9
(7) Surplus (item 6 minus item 5)	90.1
(8) Economic adjustment to surplus	31.4
(9) Adjusted surplus (item 7 plus item 8)	121.5
(10) Production in regulated districts	305.3

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10) × 100	60	40

As previously mentioned, the Board recommended an economic adjustment be made in computing both the preliminary and final percentages for the 1998–99 crop year. This is authorized under section 930.50. These subsections 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 bearing on the marketing cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions.

The order provides that the 3-year average of all sales be used in determining the optimum supply of cherries. In recent seasons, however, sales to export markets have risen dramatically. In 1997, export sales of 61.1 million pounds were 379 percent of 1994 sales (16.1 million pounds). The increase in export sales to those destinations exempt from volume regulation (countries other than Canada, Japan, and Mexico) was even greater, rising from 12.2 million pounds to 48.7 million pounds. Export sales to countries other than Canada, Japan and Mexico were exempt from volume regulations as a way for the tart cherry industry to find and expand new markets for their products. Including this volume of sales in the optimum supply formula, however, results in an overestimate of the volume of tart cherries that can be profitably marketed in unrestricted markets. Thus, the Board recommended adjusting its estimate of surplus cherries by adding exempt export sales.

By recommending this marketing policy modification, the Board believes that it will provide stability to the marketplace and the industry will be in a better situation for future years since new markets will have been developed. Board members were of the opinion that, if this adjustment is not made, growers could be paid less than their production costs, because handlers would suffer financial losses that would probably be passed on. Handlers would have to meet their reserve obligations by other means. In addition, the value of cherries already in inventory could be depressed due to the overabundant supply of available cherries, a result inconsistent with the intent of the order and the Act.

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 section 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 shall 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 29 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 such handler does not take such handler's 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 final 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 1,400 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 121.601) 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 $500,000.

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 1993/94 through 1997/98, approximately 89 percent of the U.S. tart cherry crop, or 281.1 million pounds, was processed annually. Of the 281.1 million pounds of tart cherries processed, 63 percent was frozen, 25 percent canned and 4 percent utilized for juice. The remaining 8 percent was dried or assembled into juice packs.

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, tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1997/98, approximately 88 percent of domestic tart cherry acreage is located in four States: Michigan, New York, Utah and

Wisconsin. Michigan leads the nation in tart cherry acreage with 67 percent of the total. Michigan produces about 78 percent of the U.S. tart cherry crop each year. In 1997/98, tart cherry acreage in Michigan decreased to 26,800 from 27,300 in the previous year.

In crop years 1987/88 through 1997/98, tart cherry production ranged from a high of 359 million pounds in 1987/88 to a low of 189.9 million pounds in 1991/92. The price per pound to 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 fluctuation in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices which 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 1993–1995.

The industry has 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.

In discussing the possibility of marketing percentages for the 1998–99 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 June 1998 of preliminary free and restricted percentages and in the final and free and restricted percentages established in this rule (60 percent free and 40 percent restricted).

The Board discussed the demand for tart cherries is inelastic at high and low levels of production. At the extremes, different factors become operational. The order's promulgation record stated that in very short crops there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand tart cherry sales in the marketplace sufficient to market the crops.

In considering alternatives, the Board discussed not having volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry. Returns to growers would not even cover their production costs for this season.

The Board discussed the fact that the general quality of the crop for this season is fair to good. Alternative products used by food processing and preparation establishments instead of cherries are apples and blueberries which can be substituted for cherries if cherries cannot be sold at consistent prices.

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.

While the level of benefits of this rulemaking is 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.

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

A proposed rule concerning this action was published in the **Federal Register** on Wednesday, November 18, 1998 (63 FR 64008). Copies of the rule were also mailed or sent via facsimile to all Board members and cherry handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 15-day comment period was provided to allow interested persons to respond to the proposal. Fifteen days was deemed appropriate because a rule finalizing the action would need to be in place as soon as possible since handlers are currently marketing 1998–99 cherries. No comments were received during the comment period.

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 cherries from the 1997–98 crop and need to know the final percentages as soon as possible. Further, handlers are aware of this rule, which was recommended in a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

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

Authority: 7 U.S.C. 601–674.

2. Section 930.251 is added to Subpart—Supplementary Regulations to read as follows:

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

§ 930.251 Final free and restricted percentages for the 1998–99 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 1998, which shall be free and restricted, respectively, are designated as follows: Free percentage, 60 percent and restricted percentage, 40 percent.

Dated: December 28, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–33 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 1951

RIN 0560–AF59

Disaster Set-Aside Program—Second Installment Set-Aside

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: The Farm Service Agency (FSA) is amending the disaster set-aside program requirement to allow farm borrowers to set aside portions of payments that could not be made as scheduled due to a natural disaster as declared by the President or Secretary of Agriculture during 1998, or because of low commodity prices during 1998. Applications for set-aside due to 1998 low commodity prices must be received on or before August 31, 1999. Borrowers who have loans with set-aside payments as of the publication date of this regulation may set aside a second payment on the same loans if determined eligible based on criteria established by this rule. To receive consideration for a second set-aside due to a natural disaster, the borrower's request must be received within 8 months from the date of the disaster designation, in accordance with 7 CFR part 1945, subpart A. The impact of these provisions will allow the agency to serve farmers who have experienced losses due to a natural disaster or low commodity prices during 1998 in an efficient and timely manner while helping them stay in business.

EFFECTIVE DATE: The effective date for this rule is January 5, 1999. Comments on this rule and on the information collections must be submitted by March 8, 1999 to be assured consideration.

ADDRESSES: Submit written comments to Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250–0523.

FOR FURTHER INFORMATION CONTACT: David Spillman, Branch Chief, United States Department of Agriculture, Farm Service Agency, Farm Loan Programs, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20250–0523; telephone (202) 720–0900; electronic mail: david__spillman@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The issuing agency has determined that this action does not affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.