to ''Subpart—Plants for Planting'' to reflect this change. We would also include the weed taxa whose importation is restricted by 7 CFR part 360 as restricted articles in the new plants for planting regulations. Our intent in making such a change would be to improve the clarity and transparency of our regulations governing the importation of plants for planting by allowing users of the regulations to find all these regulations in one subpart. By making it easier for users of the regulations to find and follow the regulations relevant to their situation, this action could also improve compliance.

We invite responses to the following questions in particular on the reorganization of the regulations for plants for planting we are considering:

1. Should all the regulations governing the importation of plants for planting in the subparts listed above be incorporated into one subpart? If not, which subparts should be excluded, and why?

2. If we should incorporate the regulations governing the importation of plants for planting in the subparts listed above into one subpart, which subparts should we incorporate first? Should we combine them all at once?

Reevaluating Taxa Whose Importation Is Currently Prohibited

The regulations in § 319.37–2(a) list taxa whose importation is prohibited because the importation of plants for planting from these taxa poses a risk of introducing a quarantine pest into the United States. Several of the other subparts listed above also prohibit the importation of certain taxa of plants for planting. Many of these taxa were prohibited from being imported after the discovery of a single quarantine pest as found in a shipment offered for importation into the United States or as reported in the scientific literature. Complete quarantine pest lists are not available for each of these taxa. In addition, the regulations in § 319.37–2(b) prohibit the importation of certain taxa of plants for planting if the plants for planting exceed certain sizes or ages. These limits have not been reviewed recently.

In accordance with recommendation E–48 in the Safeguarding Report, we are considering reviewing the taxa of plants for planting whose importation is currently prohibited to determine whether the pests of concern presently qualify as quarantine pests by the definition cited above. Since the time these plant taxa were designated as prohibited, the pest of concern may have become established in the United States, or scientific evidence may have become available that indicates that the pest of concern does not qualify as a quarantine pest. If we undertake this review, we will begin by conducting a PRA to determine the pests of quarantine concern associated with these taxa and whether prohibition is the only approach to mitigation that would prevent quarantine pests associated with these taxa of plants for planting from becoming established in the United States.

We invite responses to the following question on our potential reevaluation of taxa of plants for planting whose importation is currently prohibited:

1. Which taxa should be candidates for review? Which of these taxa should be assigned the highest priority for review? Please identify the taxa by scientific name and provide scientific information to support your suggestion. Please also provide information, if known, on any quarantine pests other than the pest(s) of concern listed in the regulations that may be associated with the taxa.

2. Which prohibitions on the basis of size or age should be candidates for review? Which of these prohibitions should be assigned the highest priority for review?

We further invite comment on which of the five measures above should be assigned the highest priority for implementation, if any.

Economic Data About the Plants for Planting Industry

Except for combining existing regulations governing the importation of plants for planting, which would be an administrative change, all the measures we are considering for revising the regulations would be likely to have an economic impact on numerous entities considered ''small'' according to the size standards established by the Small Business Administration (SBA).[5] After we receive answers to the specific questions listed above regarding the five measures we are considering, we may issue a proposal or proposals with the goal of implementing one or more of these measures. In order to conduct the economic analysis required by the Regulatory Flexibility Act for those potential proposals and assess the impact of any changes we might propose on small entities, we will need more economic data about the plants for planting industry than are currently available to us. Therefore, we invite the public to provide us with data regarding the structure of the plants for planting industry, including the number of firms in the industry, the number of firms that could be considered small according to the SBA's size standards, the number of firms whose business directly involves the importation of plants for planting, and any other data that would assist us in conducting economic analyses associated with these measures.

We would also appreciate any suggestions the public may have for improving other aspects of the regulations to reduce the risk of introducing quarantine pests into the United States.

[5] A guide to SBA's definitions of small business is available on the Internet at *http://www.sba.gov/size/indexguide.html.* A table of small business size standards matched to the North American Industry Classification System is available at *http://www.sba.gov/size/sizetable2002.html.*

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 6th day of December 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–27139 Filed 12–9–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV04–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2004–2005 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the establishment of final free and restricted percentages for the 2004–2005 crop year. The percentages are 72 percent free and 28 percent restricted and would establish the proportion of tart cherries from the 2004 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, the body that 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 January 10, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, 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: *moabdocket.clerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 6C02, 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 2004–2005 crop year, beginning July 1, 2004, through June 30, 2005. 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 exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the 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 the 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; District seven—Utah; District eight—Washington, and District nine—Wisconsin. Districts five and six (Oregon and Pennsylvania, respectively) would not be regulated for the 2004–2005 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 Oregon and Pennsylvania, handlers in those districts would not be subject to volume regulation during the 2004–2005 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 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 is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed 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 shall be calculated as 100 percent of the average sales of the prior three years (taking into account sales of exempt and restricted percentage cherries qualifying for diversion credit) 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 USDA. 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 (referred to as the current crop year requirement) 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 percentage tonnage. The restricted percentage tonnage is then divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary

restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, from the current crop forecast, results in a negative number, the Board is required to establish a preliminary free tonnage percentage of 100 percent with 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 24, 2004, and computed, for the 2004–2005 crop year, an optimum supply volume of 177 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 215 million pounds; a 24 million pound carryin (based on Board estimates) was subtracted from the optimum supply of 177 million pounds which resulted in 2004–2005 tonnage requirements (adjusted optimum supply) of 153 million pounds. The carryin figure reflects the amount of cherries that handlers actually had in inventory at the beginning of the crop year. Subtracting the adjusted optimum supply of 153 million pounds from the 215 million pound USDA crop estimate (for the entire production area) results in a surplus of 62 million pounds of tart cherries. The surplus was then divided by the production in the regulated districts (207 million pounds) and this resulted in a restricted percentage of 30 percent for the 2004–2005 crop year. The free percentage was 70 percent (100 percent minus 30 percent). The Board established these percentages and announced them to the industry as required by the order.

The table below summarizes the preliminary percentage computations made by the Board at its June meeting for the 2004–2005 year:

	Millions of pounds	
Optimum Supply Formula:		
(1) Average sales of the prior three crop years		177
(2) Plus desirable carryout		0
(3) Optimum supply calculated by the Board at the June meeting		177
Preliminary Percentages:		
(4) USDA crop estimate		215
(5) Carryin held by handlers as of July 1, 2004.		24
(6) Adjusted optimum supply for current crop year (Item 3 minus Item 5)		153
(7) Surplus (restricted tonnage) (Item 4 minus Item 6)		62
(8) USDA crop estimate for regulated districts		207
	Percentages	
	Free	Restricted
(9) Preliminary percentages (Item 7 divided by Item 8 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	70	30

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. No interim adjustments were made.

USDA 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 USDA and 100 percent is the final restricted percentage. The Board met on September 10, 2004, to recommend final free and restricted percentages.

The actual production reported by the Board for the entire production area was 209 million pounds, which is a 6 million pound decrease from the USDA crop estimate of 215 million pounds.

A 25 million pound carryin (based on handler reports) was subtracted from the Board's optimum supply of 177 million pounds, yielding an adjusted optimum supply for the current crop year of 152 million pounds. The adjusted optimum supply of 152 million pounds was subtracted from the actual production of 209 million pounds, which resulted in a 57 million pound surplus. The total surplus of 57 million pounds was then divided by the 202 million-pound volume of tart cherries produced in the regulated districts. This results in a 28 percent restricted percentage and a corresponding 72 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 September for the 2004–2005 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	177
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	177
Final Percentages:	
(4) Board reported production	209
(5) Carryin held by handlers as of July 1, 2004	25
(6) Adjusted optimum supply (Item 3 minus Item 5)	152
(7) Surplus (restricted tonnage)(Item 4 minus Item 6)	57
(8) Production in regulated districts	202

	Millions of pounds	
	Percentages	
	Free	Restricted
(9) Final Percentages (Item 7 divided by Item 8 x 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	72	28

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 final percentages which release 100 percent of the optimum supply volume 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 18 million pounds would be made available to handlers this season in accordance with Department Guidelines. These cherries would be made available to every handler and released 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.

The Regulatory Flexibility Act and Effects on Small Businesses

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 initial 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 $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.

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 1998/99 through 2003/04, approximately 92 percent of the U.S. tart cherry crop, or 252.8 million pounds, was processed annually. Of the 252.8 million pounds of tart cherries processed, 59 percent was frozen, 29 percent was canned, and 12 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 37,000 acres in 2003/04. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 73 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2004/05 crop is moderate in size at 209 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 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.

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, 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 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 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 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 three 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 202 million pounds. A 28 percent restriction means 145 million pounds is available to be shipped to primary markets from these five states. Production levels of 3.9 million pounds for Oregon, and 2.8 million pounds for Pennsylvania (the unregulated areas in 2004–2005), result in an additional 6.7 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This will result in an additional 18 million pounds being available for the primary market. The 145 million pounds from Michigan, New York, Utah, Washington, and Wisconsin, the approximately 7 million pounds from the other producing states, the 18 million pound release, and the 25 million pound carryin inventory gives a total of 195 million pounds being available for the primary markets.

The econometric model is used to estimate the difference between grower prices with and without restrictions. With volume controls, grower prices are estimated to be approximately $0.08 higher than without volume controls.

The use of volume controls is estimated to have a positive impact on growers' total revenues. With restriction, revenues are estimated to be $10.7 million higher than without restrictions. The without restrictions scenario assumes that all tart cherries produced would be delivered to processors for payments. This scenario is likely since the total available supply in this crop year is very similar to last year's when there was a full release of the reserve pool, and handlers appear to be encouraging growers to deliver their entire crop this year. Although carryout inventories are 25 million pounds, only 1 million pounds is in the reserve while 24 million pounds are held in free inventories held by packers.

It is concluded that the 28 percent volume control would not unduly burden producers and handlers, particularly smaller growers and handlers. The 28 percent restriction would be applied in Michigan, New York, Utah, Washington, and Wisconsin. The growers and handlers in the other two states covered under the marketing order will benefit from the market stability anticipated to result from this restriction.

Recent grower prices have been as high as $0.44 per pound in the 2002–2003 crop year. At current production and yield levels, the cost of production is reported to be $0.43 per pound. Thus, the estimated $0.43 per pound received by growers under the regulation scenario just covers the cost of production. Under the no regulation scenario, estimated grower prices would not cover the total cost of production. Lower yields and production result in higher costs of production. Overhead or fixed costs are spread over lower levels of production which results in higher costs of production per acre. Even in years when no production is harvested, growers face fixed costs of production and additional costs associated with maintaining the orchard for future years 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 start to build large amounts of unwanted inventories. These inventories would 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 2004–2005 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of 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 2004 of the free and restricted percentages proposed to be established by this rule (72 percent free and 28 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 2004–2005 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.

USDA 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 under the tart cherry marketing order have been previously approved by OMB and assigned OMB Number 0581–0177.

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 would not change those requirements.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2004–2005 crop. 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 930.254 is added to read as follows:

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

§ 930.254 Final free and restricted percentages for the 2004–2005 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2004, which shall be free and restricted, respectively, are designated as follows: Free percentage, 72 percent and restricted percentage, 28 percent.

Dated: December 7, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–27161 Filed 12–9–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. FV04–983–2 PR]

Pistachios Grown in California; Establishment of Continuing Assessment Rate and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish a continuing assessment rate for the Administrative Committee for Pistachios (Committee) for the 2004–05 and subsequent fiscal periods of $0.0014 per pound of pistachios received for processing and would establish reporting requirements under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered by the Committee. Authorization to assess pistachio handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated. Requiring handlers to file annual reports with the Committee would facilitate the Committee's collection of handler assessments.

DATES: Comments must be received by February 8, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax (559) 487–5906; 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, 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*.