■ 4. Amend § 2.68 by adding paragraph (a)(12) to read as follows:

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) * * *

(12) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects, including agricultural statistical survey activities (7 U.S.C. 450a).

* * * * *

PART 520—PROCEDURES FOR IMPLEMENTING NATIONAL ENVIRONMENTAL POLICY ACT

■ 5. The authority citation for part 520 continues to read as follows:

Authority: National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321 *et seq.;* E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR 1500–1508.

■ 6. Amend § 520.4 by revising paragraph (a) to read as follows:

§ 520.4 Responsibilities.

(a) *Administrator.* The Administrator is responsible for environmental analysis and documentation required for compliance with the provisions of NEPA and related laws, policies, plans, programs, and projects. The ARS Deputy Administrator for Natural Resources has been delegated responsibility for the establishment of procedures and coordination necessary to carry out the policies and provisions of NEPA.

* * * * *

Dated: June 29, 2012.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2012–16610 Filed 7–6–12; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–11–0092; FV12–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Increasing the Primary Reserve Capacity and Revising Exemption Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the primary inventory reserve capacity and the exemption provisions applicable to handler diversion activities prescribed under the marketing order for tart cherries (order). The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, and is administered locally by the Cherry Industry Administrative Board (Board). This action increases the volume of tart cherries that can be placed in the primary inventory reserve from 50 million pounds to 100 million pounds and revises exemption provisions by limiting diversion credits for new market development and market expansion activities to one year. These changes are intended to facilitate sales and lessen the impact of market expansion activities on volume restriction calculations.

DATES: *Effective Date:* July 10, 2012.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ‘‘order.’’ The 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 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 exempted therefrom. A 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 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.

This rule revises the primary inventory reserve capacity and the exemption provisions applicable to handler diversion activities prescribed under the order. This action increases the volume of tart cherries that can be placed in the primary inventory reserve from 50 million pounds to 100 million pounds and revises exemption provisions by limiting diversion credits for new market development and market expansion activities to one year. These changes are intended to facilitate sales and lessen the impact of new market development and market expansion activities on volume restriction calculations. These changes were recommended by the Board at its meetings on September 15, 2011, and November 2, 2011, respectively.

Section 930.55 of the order provides authority for the establishment of a primary inventory reserve as part of the order's volume control provisions. Section 930.50(i) of the order establishes a cap of 50 million pounds on the primary inventory reserve, but provides authority to raise that limit if necessary, provided that any recommendation for change is made by the Board on or before September 30 to become effective for the following crop year.

Section 930.59 of the order authorizes handler diversion. When volume regulation is in effect, handlers may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. These eligible diversion activities include, in part, use for new market development and market expansion activities.

Section 930.159 of the order's administrative rules specifies methods of handler diversion, including using cherries or cherry products for exempt purposes prescribed under § 930.162.

Section 930.162 establishes the terms and conditions of exemption that must be satisfied for handlers to receive diversion certificates for exempt uses. Section 930.162(b) defines the activities which qualify for exemptions including new market development and market expansion. New market development and market expansion activities include, but are not limited to, sales of cherries into markets that are not yet commercially established, product line extensions, or segmentation of markets along geographic or other definable characteristics.

In July 2011, the Board established an ad hoc committee (committee) to examine the volume regulation process under the order and recommend changes that might benefit the industry. The committee made a series of recommendations, mostly administrative in nature, which were discussed by the entire Board at its September and November meetings. The recommended administrative changes were approved by the Board and the changes to the primary reserve and diversion credits for market expansion activities, are the subject of this action.

The order provides for the use of volume regulation to stabilize prices and improve grower returns during periods of oversupply. At the beginning of each season, the Board examines production and sales data to determine whether a volume regulation is necessary and if so, announces free and restricted percentages to limit the volume of tart cherries on the market. Free percentage cherries can be used to supply any available market, including domestic markets for pie filling, water packed, and frozen tart cherries. Restricted percentage cherries can be placed in reserve, marketed through exempt activities, including market expansion, or diverted in orchard or at the processing plant.

When using reserves to meet their restricted percentage, handlers have two inventory reserve pools available, a primary reserve currently limited to 50 million pounds and an unlimited secondary reserve. Reserves allow the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to supply markets in years when production falls below demand. Volume in the secondary reserve cannot be released unless the primary reserve is empty. Most reserve inventory flows in and out of the primary reserve, and it is rarely at zero, making it difficult to release volume from the secondary reserve.

Accessing reserves, particularly at the beginning of a crop year when the new crop has yet to be harvested, has become more important in recent seasons. When the order was promulgated, tart cherries were primarily processed as ingredients or into pie filling and a 50 million pound primary reserve met the needs of the industry. However, dried cherries, juice, and juice concentrate are growing segments of the industry, and some handlers are also manufacturing finished products for retail. The additional processing steps for these new products, as well as the growing variety of retail products have changed reserve needs. At any given time, handlers now hold more volume in reserve.

Additionally, in years when a crop is short or demand exceeds expectations, the Board can vote to issue a reserve release. During the 2010–2011 season, the Board found it necessary to issue two such releases. The Board believes increasing the capacity of the primary reserve to 100 million pounds will facilitate the release of reserve cherries when they are needed. Moving additional reserve volume into the primary pool, which is easier to access, allows the industry to be more responsive to changes in demand and supply, and allows handlers more flexibility in how they utilize the reserve. The intent of this action is not to increase the volume of cherries in reserve, but to shift a greater volume into the primary reserve where it is more accessible to meet handler needs. This change should not impact volume restriction calculations.

Accordingly, at its meeting on September 15, 2011, the Board recommended increasing the capacity of the primary inventory reserve from 50 million pounds to 100 million pounds. Fifteen Board members voted for this change and two abstained.

In addition to discussing the primary reserve, the Board also considered changes to diversion credits. These credits are a handler's alternative to placing fruit in reserve in order to comply with their restricted percentage under volume restriction. The order provides that fruit used for certain exempt purposes, including new market development and market expansion, is eligible to receive diversion credits. Market expansion is defined as an activity that expands the sale of either tart cherries or the products in which tart cherries are an ingredient. The Board currently limits the duration of any diversion credit for new market development and market expansion to three years.

The Board believes that new market development and market expansion activities have been successful in increasing sales. Some Board members expressed that these activities have been very helpful in developing the dried cherry and juice segments. Earlier regulations limited the volume that could receive diversion credit to 10 million pounds. However, the Board believed the limitation could be discouraging expansion and in 2006 recommended removing the diversion credit volume limitations. Since that time, the use of new market development and market expansion activities to meet restricted percentages has grown. The current three-year average for diversion credit for market expansion activities is approximately 35 million pounds a year.

In its discussions of this issue, the Board sought to find a solution that would continue to encourage new market development and market expansion projects, but reduce the impact these credits have on volume restriction calculations. While market expansion activities designated for diversion credit represent about 15 percent of gross sales, these sales are not included in the average sales figure used to determine optimum supply for volume regulation. The Board estimates that limiting credits to one year will lower the annual average credit for market expansion to 16 million pounds, or 19 million pounds below the current average.

With this action, it is anticipated that the difference in volume between the three-year credit and one-year credit for market expansion will shift to free sales helping to reduce the calculated restricted percentage. Using current numbers, assuming that the difference of 19 million pounds will be counted as free sales, this change will reduce the calculated surplus. Reducing the calculated surplus will, in turn, help lower restricted percentages. The Board believes this change will help make the calculations under volume regulation more reflective of industry conditions.

Accordingly, at its November 2, 2011, meeting, the Board voted unanimously to revise exemption provisions applicable to handler diversion activities by limiting diversion credits for market expansion activities to one year, with the time limit beginning with the date of the first shipment. The Board also noted that projects approved prior to this action will be allowed to finish their three-year cycle.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 40 handlers of tart cherries who are subject to regulation under the marketing order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service, and Board data, the average annual grower price for tart cherries during the 2010–11 season was $0.221 per pound, and total shipments were around 270 million pounds. Therefore, average receipts for tart cherry producers were around $99,000, well below the SBA threshold for small producers. In 2010, The Food Institute estimated an f.o.b. price of $0.84 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Using this data, average annual handler receipts were about $5.7 million, also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This rule increases the volume of tart cherries that can be placed in the primary inventory reserve from 50 million pounds to 100 million pounds and revises the exemption provisions pertaining to handler diversion activities by limiting diversion credits for new market development and market expansion activities to one year. These changes are intended to facilitate sales and lessen the impact of such activities on volume restriction calculations. This rule adds § 930.150 to the rules and regulations to establish the increased limit for the primary inventory reserve, and revises § 930.162 of the regulations regarding exemptions as they pertain to handler diversion activities. The authority for these actions is provided in §§ 930.50 and 930.59 of the order. The Board recommended these actions at meetings on September 15, 2011, and November 2, 2011.

The Board believes these changes better align regulations with industry needs and practices, facilitate the release of restricted fruit, and help avoid over-restriction. It is not anticipated that this action will impose additional costs on handlers or growers, regardless of size. Handlers of all sizes could realize a cost savings by not having to store product relegated to the secondary reserve, which is difficult to access.

Further, increasing the maximum volume that can be held in the primary reserve will allow handlers to be more responsive to industry needs by making reserves easier to access in periods of short supply or increased demand, which could facilitate sales. Changes in processing and cherry products have created a situation in which handlers may have more volume on hand at any given time, furthering the need to access reserves. Expanding the volume available in the primary reserve will assist handlers in managing their stocks and should help maintain a steady inventory of finished products to supply retailers and consumers.

Additionally, the Board believes limiting diversion credits for market expansion to one year will move more sales into the free sales category for purposes of computing volume regulations. This should reduce the calculated surplus, and in turn lower restrictions. Lower restrictions allow handlers to have a greater portion of their volume available for free sales. This could facilitate additional sales which could improve returns for growers and handlers.

This rule is expected to benefit producers, handlers, and consumers. The effects of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to these changes, including not increasing the primary reserve capacity, as well as eliminating diversion credits for market expansion rather than limiting them to one year. Regarding the change to primary reserve capacity, the Board agreed that changes in the industry necessitated this change and that it was in the industry's best interest to have this change in place by the next season. In discussing the change to diversion credits for market expansion, the Board considered phasing out diversion credits for market expansion altogether. However, some Board members believed that offering diversion credit for these activities had been beneficial to the industry and thus should not be eliminated entirely. The Board believes limiting credits to a maximum of one year would continue to encourage handlers to enter new markets, but lessen the impact on volume restriction calculations. Therefore, these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, (Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

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

In addition, the Board formed a committee to review the order's volume regulation procedures and suggest changes to the Board. This committee held meetings where these issues were discussed in detail. These meetings were public meetings and both large and small entities were able to participate and express their views. The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the September 15, 2011, and November 2, 2011, meetings were public meetings and all entities, both large and small, were able to express views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on April 25, 2012 (77 FR 24640). Copies of the rule were emailed to all Board members and tart cherry handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A

15-day comment period ending May 10, 2012, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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 beginning to make plans for the upcoming season. Further, handlers are aware of these changes, which were recommended at public meetings. 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. A new § 930.150 is added to read as follows:

§ 930.150 Primary inventory reserve.

Beginning July 1, 2012, the primary inventory reserve may not exceed 100 million pounds.

■ 3. Section 930.162 is amended by adding a sentence at the end of section (b)(2) to read as follows:

§ 930.162 Exemptions.

* * * * *

(b) * * *

(2) * * * In addition, shipments of tart cherries or tart cherry products in new market development and market expansion outlets are eligible for handler diversion credit for a period of one year from the handler's first date of shipment into such outlets.

* * * * *

Dated: July 3, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–16699 Filed 7–6–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

RIN 0575–AC66

Reserve Account

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: Through this action, the Rural Housing Service (RHS) is amending its regulation to change the Reserve Account for new construction for the Sections 514/516 Farm Labor Housing (FLH) program and the Section 515 Rural Rental Housing (RRH) program. This action will not affect reserve accounts for existing portfolios.

DATES: *Effective Date:* This rule is effective September 7, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Steininger, Acting Director, Multi-Family Housing Preservation and Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781. Telephone: 202–720–1610 (this is not a toll-free number); email: *michael.steininger@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be not significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. If this final rule is adopted: (1) Unless otherwise specifically provided, all State and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit.

Regulatory Flexibility Act

The final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Paperwork Reduction Act

There are no new reporting and recordkeeping requirements associated with this rule.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act, by promoting the use of the Internet and other information technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Unfunded Mandate Reform Act (UMRA)

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RHS determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the environment. Therefore in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under numbers 10.405—Farm Labor Housing Loans and Grants; 10.415—Rural Rental Housing Loans; and 10.427—Rural Rental Assistance Payments.

Federalism

For the reasons discussed above, this rule does not have significant Federalism implications that warrant the preparation of a Federalism assessment under Executive Order 13132.